

Labour Act
Industrial Disputes Act

Reg. No. GR/RNP/GOA/32

2003 YEAR OF THE CHILD

RNI No. GOAENG/2002/6410

Panaji, 11th September, 2003 (Bhadra 20, 1925)

SERIES II No. 24

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/98/10860

The following Award dated 1-9-1998 in Reference No. IT/39/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 18th September, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/39/96

Workmen Rep. by
Kamgar Sabha,
Bombay.

V/s

M/s. Hindustan Ciba Geigy Ltd.,
Corlim, Goa.

— Workmen/Party I

— Employer/Party II

Workmen represented by Adv. Shri P. J. Kamat and Adv. Shri A. Shaikh.

Employer represented by Adv. Shri C. V. Pawaskar.
Panaji, dated: 1-9-1998.

AWARD - PART I

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order No. 28/29/96-LAB dated 26-6-1996 referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s. Hindustan Ciba-Geigy Ltd., Corlim, in terminating the services of the following workmen by way of dismissal with effect from the dates mentioned against their respective names is legal and justified?

- | | |
|-------------------------------|-----------|
| (1) Shri C. A. Rodrigues | 5-7-1994 |
| (2) Shri T. B. Sawant | 5-7-1994 |
| (3) Shri Vinod P. Kalangutkar | 5-7-1994 |
| (4) Shri P. S. Paidarkar | 5-7-1994 |
| (5) Shri V. G. S. Pissurlekar | 5-7-1994 |
| (6) Shri Sambhaji Kamble. | 18-7-1995 |

(2) If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/39/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Party I-Union (for short, "Sabha") filed statement of claim which is at Exb. 4. The case of the Sabha in short is that prior to 1993, the workmen of the Party II Employer (for short, "Employer") were the members of one or other internal Unions and joined the Sabha namely Kamgar Sabha to the annoyance and embarrassment of the Employer, as earlier

the internal unions were always acting as per the directions and dictations of the employer. As the service conditions required drastic revision, charter of demands was submitted by the Sabha to the employer vide covering letter dated 11-5-1993. The employer held negotiations with Mr. J. Hubert, the General Works Manager, but after he was replaced by Mr. Lehmann, the negotiations stopped as he adopted anti Union and anti Labour stance, as a result of which confrontation between the management and the workmen became inevitable. The employer charge sheeted six of the Sabha's committee members by way of victimisation by charge sheets dated 6-12-93. The said workmen filed their reply to the charge sheet denying the allegations, and called upon the employer to withdraw the suspension orders and the charge sheets. The employer with the help of the Government officials tried to pressurise the workmen to break away from the Sabha, and they were also promised that in case they did so, their suspension orders would be withdrawn and charges levelled against them would be dropped. However, the workmen refused to accede to the pressures from the employer and the Government officials. The employer thereafter, published notice of enquiry in the daily "The Navhind Times" and on learning about it, the workmen sent their residential addresses to the employer by letters dated 4-1-1994, though the employer was having their address, so that there could be direct communication between the said workmen and the employer and in the said letters, the said workmen also requested to refix the enquiry after about 15 days from the date of the communication. In the meantime, the employer already conducted the enquiries ex-parte on 30-12-93 which were illegal, malafide and in breach of principles of natural justice. The said workmen were thereafter, informed by letters dated 18-3-1994 that the enquiry had been held against them and the Enquiry Officer had submitted his findings. The copies of the same were also sent to the said workmen alongwith the said letters, and they were asked to submit their representation on the findings of the enquiry officer within 7 days from the receipt of the said letter. The said workmen replied to the said letter by their letters dated 28-3-94 informing the employer that the findings of the enquiry officer were not acceptable to them. The said workmen were not paid subsistence allowance during the period of their suspension and thus were prevented from defending themselves in the enquiries. About 3 months thereafter the employer by letter dated 16-6-94 informed the said workmen that the findings of the enquiry officer were accepted by the management and the employer had decided to terminate their services, and subsequently, by letters dated 5-7-94, the services of the said workmen were terminated. According to the Sabha, this was done by the employer so as to create fear in the mind of the workers that they will also meet the same fate in case they continue to associate with the Sabha. The employer thereafter, in order to create further fear in the minds of the workers, by threatening their livelihood suddenly declared illegal and unjustified lockout. The Sabha by letter dated 9-11-95 addressed to the employer, demanded

reinstatement of the said workmen and when the employer did not send any reply, the Sabha sent the matter for conciliation by letter dated 25-2-96. The conciliation proceedings failed due to the victimisation attitude of the employer. Though the employer alleged that the misconducts were grave in nature and hence the services of the said workmen were terminated, one of the workman Shri S. U. G. Dessai who resigned from the Sabha after his services were terminated was taken back in service and was also advanced sufficient money to pay back the amount of loan taken from the Sabha. This fact was brought to the notice of the Labour Commissioner who asked the employer to take back in service the other workmen also, but the employer refused to do so. This act on the part of the employer amounts to unfair labour practice. In the meantime, the employer suspended another workmen by name Shri A. B. Kamble and a false and concocted chargesheet was issued to him dated 22-12-93. Enquiry was held against him in violation of the principles of natural justice and without affording an opportunity to him to be defended by an office bearer of the Union. The said enquiry was held ex-parte and was completed in one sitting held on 24-4-1995. By letter dated 25-4-1995, the employer informed Mr. Kamble that the enquiry was completed and that the enquiry report would be sent to him in due course and accordingly, by letter dated 5-5-1995 enquiry report and the findings were sent to him and also representation was sought from him. By letter dated 13-6-95, Mr. Kamble sought the quashing of the entire proceedings on several grounds but by letter dated 30-6-95, the employer informed Mr. Kamble that they had decided to concur with the findings of the enquiry officer and had proposed to terminate his services. Shri Kamble replied to the said letter by his reply dated 10-7-95 but the employer by letter dated 18-7-95 terminated his services which was by way of victimisation for his trade union activities. The Sabha thereafter, made a demand on the employer for reinstatement of Mr. Kamble in service and when the employer did not do so, the dispute was raised before the conciliation officer. Since no settlement could be arrived at, though several meetings were held, the Labour Commissioner submitted his failure report to the Government and the Government referred the dispute as regards the termination of the services of the six workmen, namely, Shri A. Rodrigues, Shri T. B. Sawant, Shri V. P. Kalangutkar, Shri P. S. Pissurlekar and Shri Sambhaji Kamble (for short, "six workmen") to this Tribunal for adjudication. The Sabha has challenged the enquiry held against the six workmen as also the orders terminating their services on various grounds set out in the statement of claim. The Sabha's case is that the termination of the services of the six workmen by the employer is illegal and unjustified and also by way of victimisation and unfair labour practice. The Sabha therefore, claimed that the said six workmen were liable to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 5. The employer stated that the services of the

workmen were terminated because they had committed acts of major misconduct and not because of their trade union activities or to victimise them. The employer stated that the work at Santa Monica Plant was affected by strike and lockout for about 20 months and prior to lockout the workmen had indulged in various acts of indiscipline thereby making it impossible for the employer to run the factory without interruption and hence lockout had to be declared. The employer stated that the Sabha is in the habit of making wild and baseless allegations and the allegations made by it against the employer and the Labour Commissioners are false and baseless. The employer stated that it is not concerned with the question as to whether the workmen became the members of the Sabha or not. The employer denied that they did not like workers joining Sabha or that the internal union was always acting as per the directions and dictation of the employer. The employer stated that after the Sabha had submitted charter of demands, the employer had taken lead to negotiate, but negotiations did not materialise because of the recalcitrant attitude of the Sabha. The employer denied that they started treating the Sabha as an alien body so as not to allow the Sabha to become strong within the establishment or that its office bearers were stopped from entering Goa Territory by the Government of Goa at the instance of the employer. The employer denied that Mr. Lehmann was anti-India, anti-Labour and anti-Sabha or that he had no sympathy for the Labour. The employer stated that the negotiations had broken down during the term of Mr. J. Hubert himself. The employer stated that it was the Sabha who started the industrial confrontation by starting coercive tactics with a view to compelling the management to concede to their demands which were unreasonable. The employer stated that the Sabha instigated the workmen to indulge in coercive and restrictive practices through their committee members thereby resulting into indiscipline. The employer denied that the charge sheet issued to the workmen was on concocted facts. The employer stated that the said workmen who were local leaders were advised from time to time not to indulge in acts of indiscipline but they did not listen and continued to indulge in acts of indiscipline but they did not listen and continued to indulge in major acts of misconducts. The employer stated that the charges against the said workmen were of serious nature such as wilful go-slow in work, refusal to continue on duty in the absence of reliever, instigating the employees of different departments, to resort to go slow, threatening other employees etc. The employer admitted that the said workmen replied to the charge sheet denying the charges levelled against them and requested for withdrawal of the charge sheets and revocation of suspension, and since the employer was not satisfied with the explanation given, the said workmen were informed that enquiries would be held against them. The employer denied that they tried to bribe the said workmen to resign from the membership of the Sabha and to join the Union supported by the employer and further offered them to withdraw the suspension orders and drop the charges. The employer

stated that the chargesheets were served upon the said workmen in the factory premises itself and the said workmen had submitted their explanations, enquiries were fixed on 28-12-93, 29-12-93 and 30-12-93 and sent intimation to them to their residential address. The employer stated that the said workmen were informed that they would be allowed to be represented by any co-workman but not by Mr. D. Naterwalla, the Gen. Secretary of the Sabha, and the enquiries were adjourned to some other date. However, when the Sabha insisted that the said workmen shall be represented by the office bearer of the Union, the employer informed the Sabha by letter dated 4-1-94 that they would not allow Mr. Naterwalla to defend the workmen and the enquiries would be held as scheduled. The employer stated that the dates of enquiries were published in the local newspapers so as to avoid any allegation that the said workmen were not aware of the dates of enquiries. However, the said workmen did not attend the enquiries and hence they were conducted ex-parte. The employer denied that the enquiries were held illegally or in breach of the principles of natural justice. The employer denied that subsistence allowance was not paid to the said workmen during the suspension period which disabled them from defending themselves in the enquiries as alleged. The employer stated that subsistence allowance was paid as per the certified standing orders and they were also offered transport and lunch expenses for attending enquiries. The employer denied that the services of the said workmen were terminated illegally or malafidely or so as to create fear in the minds of the other workers. The employer stated that the demand of the Sabha for reinstating the said workmen could not be considered because the misconduct proved against the workmen was grave. The employer denied that there is any discrimination in taking back in service Mr. S. U. G. Dessai, as his case is distinguishable. The employer stated that he was taken back in service because he tendered apology and not because he had left Sabha as alleged. The employer stated that money was advanced to all the employees who reported for duty and Mr. Dessai happened to be one of them. As regards workman Mr. Kamble, the employer denied that enquiry was held against him by ignoring the principles of natural justice. The employer stated that he was allowed to be defended in the enquiry as per the certified standing orders, and since inspite of the opportunity given, he did not participate in the enquiry and hence the enquiry was conducted ex-parte against him. The employer denied that the chargesheets issued to the six workmen named in the reference were based on concocted facts or that the charges were framed to victimise them. The employer stated that considering the nature of the misconducts committed by the said six workmen, termination of their services is legal and justified.

4. Thereafter the Sabha filed rejoinder at Exb. 6. On the pleadings of the parties, following issues were framed at Exb. 9.

1. Whether the Party I proves that the domestic enquiry held against the workmen is not fair, proper and impartial?
2. Whether the charges of misconduct levelled against the workmen are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the termination of the services of the workmen is by way of victimisation?
4. Whether the Party I proves that the termination of the services of the workmen by the Party II w.e.f. their respective dates is illegal and unjustified?
5. Whether the workmen are entitled to any relief?
6. What Award?

5. Issue Nos. 1 & 2 were treated as preliminary issues as the said issues were touching the fairness of the enquiry. After framing the issues the case was fixed for evidence of the Sabha on the preliminary issues and accordingly the Sabha led evidence on the said issues. On completing the evidence of the Sabha the case was fixed for the evidence of the employer on the preliminary issues. During the pendency of the recording of the evidence of the employer on the preliminary issues, the workmen Shri T. B. Sawant, Shri Vinod P. Kalangutkar, Shri P. S. Paidarkar, Shri V. G. S. Pissurlekar and Shri Sambhaji Kamble and the employer submitted that the dispute between the said workmen and the employer was amicably settled and they filed the memorandum of settlement entered into with the said workmen separately. They also filed the applications along with the said settlements duly signed by the workmen praying that the reference be disposed of as far as the said workmen are concerned in view of the settlement arrived at with the employer. The workmen and the employer also prayed that consent award be passed in terms of the settlement signed with the said workmen. Adv. P. J. Kamat, the learned counsel for the workmen submitted that he has no objection for passing the consent award in relation to the said workmen. The settlement signed with the workman Shri P. S. Paidarkar dated 5th July, 1998 is produced at Exb. 21; the settlement signed with workman Shri T. B. Sawant dated 5th July, 1998 is produced at Exb. 22; the settlement signed with workman Shri V. P. Kalangutkar dated 5th July, 1998 is produced at Exb. 23; the settlement signed with workman Shri V. G. S. Pissurlekar dated 5th July, 1998 is produced at Exb. 24 and the settlement signed with workman Shri S. Kamble dated 5th July, 1998 is produced at Exb. 25. I have gone through the memorandum of settlement signed by the employer with the above said workmen and I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I, therefore accept the submissions made by the workmen and the employer and pass the

consent award in terms of the settlement Exb. 21, 22, 23, 24 and 25.

TERMS OF SETTLEMENT DATED 5TH JULY, 1998,
EXB. 21 IN RESPECT OF WORKMAN
SHRI P. S. PAIDARKAR

1. That the order dated 5th July, 1994 passed by the management terminating the services of Mr. P. S. Paidarkar (hereinafter referred to as the "workman") shall stand.
2. In lieu of reinstatement with continuity of service and full back wages the workman shall be paid a sum as detailed in Annexure "A" in full and final settlement and that the said sum shall be deemed to be wages earned in the respective years for the purposes of Section 89 of the Income Tax Act read with section 192 (2A) thereof and Rule 21 A of the Income Tax Rules, 1962. The said payment will not attract any benefit such as Provident Fund, Gratuity etc.
3. In addition the workman shall be paid one time compensation as shown in Annexure "A".
4. That the payments as per Clauses 2 and 3 above shall be made immediately after execution of this settlement.
5. That the Provident Fund and Gratuity payable to the workman shall be computed with reference to the actual service rendered by the workman immediately preceding the date of termination of employment and that the payment in respect of gratuity shall be made on the basis of the salary last drawn by them at the time of termination of employment. The amount due and payable in respect of Provident Fund and gratuity shall be settled as per the company's rules.
6. That the workman shall also be paid other legal dues, if any, as per the company's rules.
7. Subject to the provision of clauses 2 and 3 hereinabove the payment shall be subject to Tax, if any.
8. That in consideration of amount as specified in Annexure "A" which the company has agreed to pay, the workman shall have no other claim against the company, monetary or otherwise and that this payment shall be deemed to be in full and final settlement of the claim of the workman for reinstatement in employment with continuity of service and full back wages and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard and further the workman shall have no claim either for reinstatement or for re-employment with the company at any time in future.
9. The workman shall be entitled to benefits of award in IT No. 38/95 upto the date of employment.

10. That the workman concerned will file a purshis before the Hon'ble Industrial Tribunal stating that the dispute in so far as he is concerned regarding reinstatement with continuity of service and full back wages has been settled and that the reference No. IT/39/96 be disposed of in so far as the workman is concerned as settled or alternatively in view of the settlement the workman be excluded from the purview of the above reference and/or award if any that may be made in the aforesaid reference.

Annexure "A"

Sr. No.	Particulars	Amount in Rs.
1.	Amount payable as per clauses 2 & 3 as per the settlement dated 5th July, 1998.	595000
2.	Reimbursement of medical expenses	55000
	Total Compensation	650000
	Less: Tax deducted at source	68248
	Net Amount Payable	581708

(Rupees Five Lac Eighty One Thousand Seven Hundred and Eight only)

Note: While providing relief under section 89(1) of the Income Tax Act 1961, the amounts have been rounded off wherever necessary.

TERMS OF SETTLEMENT DATED 5TH JULY, 1998,
EXB. 22 IN RESPECT OF WORKMAN
SHRI T. B. SAWANT

1. That the order dated 5th July, 1998 passed by the management terminating the services of Mr. Tulsidas B. Sawant (hereinafter referred to as the "workman") shall stand.
2. In lieu of reinstatement with continuity of service and full back wages the workman shall be paid a sum as detailed in Annexure "B" in full and final settlement and that the said sum shall be deemed to be wages earned in the respective years for the purpose of Section 89 of the Income Tax Act read with section 192 (2A) thereof and Rule 21 A of the Income Tax Rules, 1962. The said payment will not attract any benefits such as Provident Fund, Gratuity etc.
3. In addition the workman shall be paid one time compensation as shown in Annexure "B".
4. That the payments as per clauses 2 and 3 above shall be made immediately after execution of this settlement.
5. That the Provident Fund and Gratuity payable to the workman shall be computed with reference to the actual service rendered by the workman

immediately preceding the date of termination of employment and that the payment in respect of gratuity shall be made on the basis of the salary last drawn by them at the time of termination of employment. The amount due and payable in respect of Provident Fund and Gratuity shall be settled as per the company's rules.

6. That the workman shall also be paid other legal dues, if any, as per the company's rules.
7. Subject to the provision of clauses 2 and 3 hereinabove the payment shall be subject to Tax, if any.
8. That in consideration of amount as specified in Annexure "B" which the company has agreed to pay, the workman shall have no other claim against the company, monetary or otherwise and that this payment shall be deemed to be in full and final settlement of the claim of the workman for reinstatement in employment with continuity of service and full back wages and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard and further the workman shall have no claim either for reinstatement or for re-employment with the company at any time in future.
9. The workman shall be entitled to benefits of award in IT No. 38/95 upto the date of employment.
10. That the workman concerned will file a purshis before the Hon'ble Industrial Tribunal stating that the dispute in so far as he is concerned regarding reinstatement with continuity of service and full back wages has been settled and that the reference No. IT/39/96 be disposed of in so far as the workman is concerned as settled or alternatively in view of the settlement the workman be excluded from the purview of the above reference and/or award if any that may be made in the aforesaid reference.

Sr. No.	Particulars	Amount in Rs.
1.	Amount payable as per clauses 2 & 3 as per the settlement dated 5th July, 1998.	595000
2.	Reimbursement of medical expenses	55000
	Total Compensation	650000
	Less: Tax deducted at source	57349
	Net Amount Payable	592272

(Rupees Five Lac Ninety Two Thousand Two Hundred and Seventy Two only)

Note: While providing relief under section 89(1) of the Income Tax Act 1961, the amounts have been rounded off wherever necessary.

TERMS OF SETTLEMENT DATED 5TH JULY, 1998,
EXB. 23 IN RESPECT OF WORKMAN
SHRI V. P. KALANGUTKAR

1. That the order dated 5th July, 1998 passed by the management terminating the services of Mr. Vinod P. Kalangutkar (hereinafter referred to as the "workman") shall stand.
2. In lieu of reinstatement with continuity of service and full back wages the workman shall be paid a sum as detailed in Annexure "D" in full and final settlement and that the said sum shall be deemed to be wages earned in the respective years for the purpose of Section 89 of the Income Tax Act read with section 192 (2A) thereof and Rule 21 A of the Income Tax Rules, 1962. The said payment will not attract any benefits such as Provident Fund, Gratuity etc.
3. In addition the workman shall be paid one time compensation as shown in Annexure "D".
4. That the payments as per clauses 2 and 3 above shall be made immediately after execution of this settlement.
5. That the Provident Fund and Gratuity payable to the workman shall be computed with reference to the actual service rendered by the workman immediately preceding the date of termination of employment and that the payment in respect of gratuity shall be made on the basis of the salary last drawn by them at the time of termination of employment. The amount due and payable in respect of Provident Fund and Gratuity shall be settled as per the company's rules.
6. That the workman shall also be paid other legal dues, if any, as per the company's rules.
7. Subject to the provision of clauses 2 and 3 hereinabove the payment shall be subject to Tax, if any.
8. That in consideration of amount as specified in Annexure "D" which the company has agreed to pay, the workman shall have no other claim against the company, monetary or otherwise and that this payment shall be deemed to be in full and final settlement of the claim of the workman for reinstatement in employment with continuity of service and full back wages and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard and further the workman shall have no claim either for reinstatement or for re-employment with the company at any time in future.
9. The workman shall be entitled to benefits of award in IT No. 38/95 upto the date of employment.
10. That the workman concerned will file a purshis before the Hon'ble Industrial Tribunal stating that the dispute in so far as he is concerned regarding reinstatement with continuity of service and full

back wages has been settled and that the reference No. IT/39/96 be disposed of in so far as the workman is concerned as settled or alternatively in view of the settlement the workman be excluded from the purview of the above reference and/or award if any that may be made in the aforesaid reference.

ANNEXURE "D"

Sr. No.	Particulars	Amount in Rs.
1.	Amount payable as per clauses 2 & 3 as per the settlement dated 5th July, 1998.	595000
2.	Reimbursement of medical expenses	55000
	Total Compensation	650000
	Less: Tax deducted at source	58814
	Net Amount Payable	590953

(Rupees Five Lac Ninety Thousand Nine Hundred and Fifty Three only)

Note: While providing relief under section 89(1) of the Income Tax Act, 1961, the amounts have been rounded off wherever necessary.

TERMS OF SETTLEMENT DATED 5TH JULY, 1998,
EXB. 24 IN RESPECT OF WORKMAN SHRI V. G. S.
PISSURLEKAR

1. That the order dated 5th July, 1998 passed by the management terminating the services of Mr. V. G. S. Pissurlekar (hereinafter referred to as the "workman") shall stand.
2. In lieu of reinstatement with continuity of service and full back wages the workman shall be paid a sum as detailed in Annexure "C" in full and final settlement and that the said sum shall be deemed to be wages earned in the respective years for the purpose of Section 89 of the Income Tax Act read with section 192 (2A) thereof and Rule 21 A of the Income Tax Rules, 1962. The said payment will not attract any benefits such as Provident Fund, Gratuity etc.
3. In addition the workman shall be paid one time compensation as shown in Annexure "C".
4. That the payments as per clauses 2 and 3 above shall be made immediately after execution of this settlement.
5. That the Provident Fund and Gratuity payable to the workman shall be computed with reference to the actual service rendered by the workman immediately preceding the date of termination

of employment and that the payment in respect of gratuity shall be made on the basis of the salary last drawn by them at the time of termination of employment. The amount due and payable in respect of Provident Fund and Gratuity shall be settled as per the company's rules.

6. That the workman shall also be paid other legal dues, if any, as per the company's rules.
7. Subject to the provision of clauses 2 and 3 hereinabove the payment shall be subject to Tax, if any.
8. That in consideration of amount as specified in Annexure "C" which the company has agreed to pay, the workman shall have no other claim against the company, monetary or otherwise and that this payment shall be deemed to be in full and final settlement of the claim of the workman for reinstatement in employment with continuity of service and full back wages and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard and further the workman shall have no claim either for reinstatement or for re-employment with the company at any time in future.
9. The workman shall be entitled to benefits of award in IT No. 38/95 upto the date of employment.
10. That the workman concerned will file a purshis before the Hon'ble Industrial Tribunal stating that the dispute in so far as he is concerned regarding reinstatement with continuity of service and full back wages has been settled and that the reference No. IT/39/96 be disposed of in so far as the workman is concerned as settled or alternatively in view of the settlement the workman be excluded from the purview of the above reference and/or award if any that may be made in the aforesaid reference.

ANNEXURE "C"

Sr. No.	Particulars	Amount in Rs.
1.	Amount payable as per clauses 2 & 3 as per the settlement dated 5th July, 1998.	595000
2.	Reimbursement of medical expenses	55000
	Total Compensation	650000
	Less: Tax deducted at source	58396
	Net Amount Payable	591141

(Rupees Five Lac Ninety One Thousand One Hundred and Forty one only)

Note: While providing relief under section 89(1) of the Income Tax Act, 1961, the amounts have been rounded off wherever necessary.

TERMS OF SETTLEMENT DATED 5TH JULY, 1998,
EXB. 25 IN RESPECT OF WORKMAN SHRI
SAMBHAJI KAMBLE

1. That the order dated 5th July, 1998 passed by the management terminating the services of Mr. Sambhaji Kamble (hereinafter referred to as the "workman") shall stand.
2. In full and final settlement of his claim the workman shall be paid the amount as detailed in Annexure "E" and that the said sum shall be deemed to be wages earned in the respective years for the purposes of Section 89 of the Income Tax Act read with section 192 (2A) thereof and Rule 21 A of the Income Tax Rules, 1962. The said payment will not attract any benefit such as Provident Fund, Gratuity etc.
3. That the payments as per clause 2 above shall be made immediately after execution of this settlement.
4. That the Provident Fund and Gratuity payable to the workman shall be computed with reference to the actual service rendered by the workman immediately preceding the date of termination of employment and that the payment in respect of gratuity shall be made on the basis of the salary last drawn by them at the time of termination of employment. The amount due and payable in respect of Provident Fund and Gratuity shall be settled as per the company's rules.
5. That the workman shall also be paid other legal dues, if any, as per the company's rules.
6. Subject to the provision of clause 2 hereinabove the payment shall be subject to Tax, if any.
7. That in consideration of amount as specified in Annexure "E" which the company has agreed to pay, the workman shall have no other claim against the company, monetary or otherwise and that this payment shall be deemed to be in full and final settlement of all claims of the workman against the company and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard anytime in future.
8. The workman shall be entitled to benefits of award in IT No. 38/95 upto the date of employment.
9. That the workman concerned will file a purshis before the Hon'ble Industrial Tribunal stating that the dispute in so far as he is concerned regarding reinstatement with continuity of service and full back wages has been settled and that the reference No. IT/39/96 be disposed of in so far as the workman is concerned as settled or alternatively in view of the settlement the workman be excluded from the purview of the above reference and/or award if any that may be made in the aforesaid reference.

ANNEXURE "E"

Sr. No.	Particulars	Amount in Rs.
1.	Amount payable as per clauses 2 & 3 as per the settlement dated 5th July, 1998.	151024
2.	Reimbursement of medical expenses	10000
	Total Compensation	161024
	Less: Tax deducted at source	4597
	Net Amount Payable	156427

(Rupees One Lac Fifty Six Thousand Four Hundred and Twenty Seven only)

Note: While providing relief under section 89(1) of the Income Tax Act, 1961, the amounts have been rounded off wherever necessary.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/156

The following Award dated 23-11-1998 in Reference No. IT/46/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary(Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/46/98

Kum. Ratan S. Tuleskar

Tuleskar Wado

Nagzer-Goa.

Workman/Party I

V/s

M/s Nilima Twines and Ropes

Pvt. Ltd.,

Thivim Industrial Estate,

Karaswada-Bardez, Goa.

Employer/Party II

Workman /Party I represented by Shri Subhas Naik.

Employer/Party II Ex-Parte

Panaji, dated:- 23-12-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 29th June, 1998 bearing No. IRM/CON/MAP/(75)/97-98/9400 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Nilima Twines and Ropes Pvt. Ltd., Thivim Industrial Estate, Karaswada, Bardez Goa, in terminating the services of Kum. Ratan S. Tuleskar, Helper, with effect from 16-6-1997, is legal and justified?

(2) If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/46/98 and registered A/D notice was issued to the parties who were duly served with the said notice. In pursuance to the said notice, the workman/Party I (for short "workman") appeared and was represented by Shri Subhas Naik. The employer/Party II (for short, "employer") though duly served with the notice did not appear and hence the case was proceeded ex-parte against the employer on 21-9-98.

3. The workman filed statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that employer is having its factory situated at Tivim Industrial Estate, Karaswada, Tivim, Bardez, Goa wherein fishing nets and nylon ropes and twines are manufactured. That she was employed by the employer since 4th October, 1993 on salary of Rs. 920/- per month and she worked continuously till the date of termination of her service. That on 14-6-97 when she reported for work she was orally informed that her services stood terminated from 16-6-97 and that from that day she should not report for work. That at the time of termination of her service no reasons for her termination were given, nor she was given one month's notice nor she was paid any retrenchment compensation. The workman contended that termination of her service is in violation of Sec. 25F and 25G of the Industrial Disputes Act, 1947. She also contended that the employer violated the provisions of Sec. 25H of the I.D. Act 1947 as new workers were employed in her place but she was not re-employed. That she raised an industrial dispute vide letter dated 27-6-97 and conciliation proceedings were held by the Asst. Labour Commissioner, Mapusa, Goa, but the employer did not participate in the said proceedings. That the conciliation proceedings ended in a failure and hence the Government made the present reference. The workman contended that since termination of her service is

illegal and unjustified she is entitled to reinstatement in service with full back wages.

4. The present case was proceeded ex-parte against the employer on 21-9-98 as inspite of the opportunities given, none appeared on its behalf. Consequently ex-parte evidence of the workman was recorded. The workman examined only herself and her evidence is on record. In her deposition she has stated that she was employed with the employer as an Operator since 14-10-93 and that the employer is having its factory at Tivim Industrial Estate, Tivim wherein fishing nets, nylon ropes and twines manufactured. She has stated that on 14-6-97 she reported for work as usual and at that time her wages were paid and she was told that her services stood terminated from 16-6-97 and that she was not given any reasons for terminating her services. She has stated that on 16-6-97 she reported for work but she was not allowed to resume duties. She has stated that at the time when her services were terminated she was not given one month's notice nor she was paid any retrenchment compensation. She has stated that she worked continuously from the date of her appointment till the date of termination of her service and that her last drawn salary was Rs. 920/- p.m. She has produced the letter dated 27-6-97 Exb.W-1 whereby she raised the dispute as regards termination of her services. She has stated that the employer did not participate in the conciliation proceedings held by the Asst. Labour Commissioner and hence the proceedings ended in failure. She has claimed that she is entitled for reinstatement in service with full back wages.

5. The deposition of the workman has gone unchallenged as the case has proceeded ex-parte against the employer. The employer was given opportunities to contest the proceedings. But the employer chose to remain absent and allowed the case to proceed ex-parte. I have no reason to disbelieve the statement of the workman which is made on oath. The workman has stated that the termination of her service is illegal because she was not given on month's notice or notice pay nor she was paid retrenchment compensation. "Retrenchment" is defined in sec. 2(00) of the I.D. Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The services of the workman were terminated without giving any reasons. It was not as a matter of punishment inflicted by way of disciplinary action. Her case also does not fall within the exceptions laid down under sec. 2(00) of the Industrial Disputes Act, 1947, which are (a) Voluntary retirement of the workman or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained

therein or (c) termination of the service of a workman on the ground of continued ill health. Therefore the termination of the services of the workman Ratan Tulsekar amount to retrenchment.

6. Sec. 25F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provision the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25 B(2) of the Industrial Disputes Act 1947 defines "Continuous Service". As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months proceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case the workman obviously was not employed below ground in a mine as she was employed in the factory of the employer. The workman has stated in her deposition that she was employed as an operator from 14-10-93 and that she has worked continuously till her services were terminated on 16-10-97. There is no challenge to this statement of the workman. There is no evidence contrary to the statement made by the workman and I find no reason to disbelieve her statement which is made on oath. It is therefore established that the workman worked with the employer for more than 240 days prior to 16-10-97 and hence the provisions of Sec. 25 F of the Industrial Disputes Act, 1947 became applicable to her. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Hariyana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. In the present case the workman has stated that she was not given one month's notice or notice pay nor she was paid retrenchment compensation. There is no contrary evidence to this. Therefore, there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947, from the employer. In the circumstances, I hold that the termination of the services of the workman by the employer w.e.f. 16-10-97 is illegal and unjustified.

7. Once it is held that the termination is illegal, the next question for consideration is what relief should be granted to the workman. The ordinary rule is that the workman is entitled for reinstatement with full back wages, unless there are reasons which do not warrant reinstatement or full back wages. In the present case I do not find any reason to deviate from this normal rule.

The workman has stated that she is unemployed. There is no evidence to the contrary. The Supreme Court in the case of State Bank of India v/s Sundera Money reported in AIR 1976 SC 1111 has held that reinstatement is the necessary relief in case of violation of the provisions of Sec. 25F of the I.D. Act 1947. In the present case the services of the workman were terminated in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. There is no evidence that the workman is gainfully employed. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Nilima Twines and Ropes Private Limited, Thivim Industrial Estate, Karaswada, Bardez, Goa, in terminating the services of the workman Kum. Ratan S. Tuleskar, w.e.f. 16-6-1997 is illegal and unjustified. Kum. Ratan Tuleskar is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/238

The following Award dated 29-12-1998 in Reference No. IT/47/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/47/92

Workmen
Rep. by the General Secretary,
Gomantak Mazdoor Sangh

Kamakshi Krupa, Khadapaband,
Ponda, Goa.

Workmen/Party I

V/s

M/s Agencia E. Sequeira
Campal, Panaji Goa.

Employer/Party II

Workmen/Party I represented by Adv. Shri P. B. Devari

Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated:- 29-12-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28/20/92-LAB dated 6-7-1992 referred the following dispute for adjudication to this Hon'ble Tribunal.

"Whether the action of the management of M/s Agencia E. Sequeira, Panaji Goa, in terminating the services of the following 25 workmen w.e.f. 17-9-91 is legal and justified?"

1. Shri Ramdas B. Naik, Asst. Auto Electrician
2. Shri Constancio Jose Pereira, Asst. Mechanic
3. Shri Pedro Santan Dias, Helper
4. Shri Vincente Caetano Dias, Asst. Welder
5. Shri Shanu Vassu Naik, Helper
6. Shri Bicu Waman Gauncar, Helper
7. Shri Anand Morto Naik, Helper
8. Shri Francis Manuel Fernandes, Helper
9. Shri Pandurang Minguel Bomcar, Helper
10. Shri Minguel Antonio D'Souza, Painter
11. Shri Gurudas Narayan Moli, Painter
12. Shri Ganesham Govind Surlekar, Welder
13. Shri Mohandas Balkrishna Chari, Sr. Charis
14. Shri Prabhakar Somnath Chari, Sr. Charis
15. Shri Ashok Rayu Chari, Sr. Charis
16. Shri Ramakant G. Naik
17. Shri Martin Agostin Vaz, Helper
18. Shri Gajanan Vassu Naik, Helper
19. Shri Tucaram Pandurang Kortikar, Helper
20. Shri Janario Sebastiao Cardoz
21. Shri Sakaram Piso Gaude
22. Shri Gabriel Luis Gomes
23. Shri John Sebastiao Fernandes, Security/Helper
24. Shri Salvador Domingos Vaz, Security/Helper
25. Shri Vijaianand B. Naik, Security/Helper.

(2) If not, to what relief the workmen are entitled."

2. On receipt of the reference, a case was registered under No. IT/47/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (For short 'Union') filed Statement of Claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that the employer/Party II (For short 'Employer') failed to pay the increased amount of VDA in accordance with the terms of the settlement dated 9-12-96 and in order to recover

the said amount, the Union filed a claim under section 33-C(1) of the I. D. Act, 1947 and subsequently, a recovery certificate dated 16-9-91 was issued. That on receiving the information about issuing of recovery certificate, the employer terminated the services of 35 workmen w.e.f. 17-9-91. That the termination of the services of the workmen is only by way of victimisation as they filed claim application through the Union for the recovery of their wages illegally deducted by the employer. That, after the termination of the services of the 35 workmen, the Union raised a dispute before the Asst. Labour Commissioner, Panaji and as the conciliation proceedings resulted in failure, the Government referred the dispute as regards the termination of services of the workmen named in the reference to this Tribunal for adjudication. The Union contended that the reasons given by the employer for retrenchment of the workmen are not proper true and genuine and the employer has not retrenched the workmen on the principles of 'Last come, first go'. The Union contended that the employer did not follow the principles/procedure of Sec-25-F of the I. D. Act, 1947 at the time of effecting retrenchment and also that after terminating the services of the workmen, the employer recruited new workers/loaders at the Margao depot as well as at the Mapusa depot. The Union contended that the employer did not take permission from the Government thereby violating the principles of Chapter 5-B of the I. D. Act, 1947. The Union contended that since the date of termination of the services of the workmen, they are unemployed and as a result, they are undergoing hardship due to unemployment. The Union contended that the termination of the services of the workmen is illegal, improper and unjustified and hence, they are entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 4. The employer denied that the Union, namely the Gomantak Mazdoor Sangh represents the workmen of the establishment of the employer. The employer denied that the termination of the services of the workmen is on account of show cause notice issued by the Labour Commissioner or because of the recovery certificate issued by Collectorate or that it is on account of victimisation. The employer denied that they illegally deducted the wages of the workmen or that any conciliation proceedings were pending at the time of retrenchment of the workmen. The employer denied that the reasons given by the employer for retrenchment are not true and genuine or that new workers were recruited at the Margao and Mapusa Depot after terminating the services of the workmen. The employer denied that they have not retrenched the workmen on the principles of 'Last come, first go', or that they have not followed the procedure of the Industrial Disputes Act, 1947. The employer stated that retrenchment effected is strictly in accordance with the provision of the I. D. Act, 1947. The employer denied that no permission from the Government was required to be obtained under Chapter 5-B of the I. D. Act, 1947. The employer denied that the termination of services of the workmen is illegal,

improper and unjustified. The employer stated that the workmen are not entitled to any reliefs as claimed by them. The employer also stated that the workmen are gainfully employed. The Union thereafter filed Rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and the case was fixed for the evidence of the Union. When the evidence of the Union was partly recorded, the parties submitted that they desire to settle the dispute amicably and prayed for time to file the terms of settlement. Accordingly, on 20-11-98, the parties appeared and filed the terms of settlement at Exb. 11. The parties also filed an application dated 20-11-98 praying that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 20-11-98 Exb. 11.

ORDER

1. It is agreed by and between the parties that the undermentioned workmen whose names are listed in Column No. 1 hereunder shall be paid by the Employer M/s Agencia E. Sequeira the amounts mentioned in Column No. 2 against their names in full and final settlement of all their claims and demands against M/s Agencia E. Sequeira.

Column No. 1	Column No. 2
Name of the Workmen	Amount Receivable
1. Shri Ramdas B. Naik	... Rs. 48,271/-
2. Shri Ramakant G. Naik	... Rs. 45,975/-
3. Shri Anand M. Naik	... Rs. 47,221/-
4. Shri Mohandas B. Chari	... Rs. 97,416/-
5. Shri Gurudas Narayan Moli	... Rs. 67,921/-
6. Shri Prabhakar S. Chari	... Rs. 93,357/-
7. Shri Ashok Rayu Chari	... Rs. 93,357/-
8. Shri Martin A. Vaz.	... Rs. 43,548/-

- II) The Union and the workmen hereby declare that they do not press for the claims and reliefs of the under-mentioned workmen mentioned in the Order of Reference as they have already settled their dues and they are not interested in the matter.

1. Shri Constancio John Pereira
2. Shri Pedro Santan Dias
3. Shri Vincente Caetano Dias
4. Shri Bicu Waman Gaonkar
5. Shri Francis Manuel Fernandes
6. Shri Pandurang Minguel Bomcar
7. Shri Minguel Antonio D'Souza
8. Shri Ganesham Govind Surlekar
9. Shri Gajanan Vassu Naik
10. Shri Tucaram Pandurang Kortikar
11. Shri Janario Sebastiao Cardoz
12. Shri Sakaram Pisso Gaude
13. Shri Gabriel Luis Gomes

14. Shri John Sebastian Fernandes
15. Shri Salvador Domingos Vaz
16. Shri Vijayanand Sabaji Naik
17. Shri Vassu Shanu Naik.

The parties hereby agree that the above mentioned workmen shall not receive any relief and that they shall have no claim of whatsoever in nature against the Employer M/s. Agencia E. Sequeira in Reference No. IT/47/92 and/or in any other matter.

III. It is agreed by and between the parties that an amount equivalent to 10% of the money payable to the workmen as stated herebefore in clause No. 1 of these terms of settlement shall be deducted from the dues payable to the said workmen and the said deducted amount shall be paid to the Gomantak Mazdoor Sangh as their contribution to the Union.

IV. The balance of the amounts after deducting 10% Union contribution as aforesaid shall be paid to the respective workmen within seven days from the date of this settlement.

V. The parties hereby agree that in view of these terms of settlement, the dispute between the workmen and M/s. Agencia E. Sequeira in Reference No. IT/47/92 is conclusively settled and the workmen/Union shall have no claim/demand against the Employer in relation to their employment or any other matter.

VI. The parties agree to file this settlement in the Hon'ble Industrial Tribunal, Government of Goa, in Reference No. IT/47/92 with a request to pass an Award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/239

The following Awards dated 29-12-98 in Reference No. IT/6/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/6/92

Workmen

Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Khadapaband,
Ponda-Goa.

Workmen/Party I

V/s

M/s. Agencia E. Sequeira
Campal,
Panaji-Goa.

Employer/Party II

Workmen/Party I represented by Adv. Shri P. B. Devari
Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated: 29-12-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 16-12-1991 bearing No. 28/33/91-LAB referred the following dispute for adjudication to this Tribunal.

(1) "Whether the demands served on the management of M/s. Agencia E. Sequeira, Panaji on behalf of their workmen by Gomantak Mazdoor Sangh and shown below are legal and justified?

(2) If so, to what relief the workmen are entitled?

DEMANDS

Demand No. I:- Flat rise and Basic Salary

It is demanded that each workman be given a flat-rise of Rs. 150/- per month over and above the basic salary. It is also demanded that a new set of increments be worked out at enhanced rates with retrospective effect from 1-7-88.

Demand No. II:- Seniority Increments

It is demanded that each workman be eligible to seniority increments on the following basis.

- | | | |
|----------------------------------|-----|---|
| (a) Those who completed 3 years | ... | 1 |
| (b) Those who completed 6 years | ... | 2 |
| (c) Those who completed 9 years | ... | 3 |
| (d) Those who completed 12 years | ... | 4 |
| (e) Those who completed 15 years | ... | 5 |
| and above | | |

The existing practice of honouring workmen who have completed 10 years of service ought to continue; and those workmen completed 20 years of service should be given two special increments.

Demand No. III:- Travelling Allowance:

It is demanded that each workman be paid a travelling allowance of Rs. 5/- per day of attendance with retrospective effect from 1-7-88.

Demand No. IV:- Washing Allowance:

It is demanded that an amount of Rs. 25/- per month be paid to each workman as washing allowance with retrospective effect from 1-7-88.

Demand No. V:- Shift Allowance:

It is demanded that an amount of Rs. 4/- per shift with retrospective effect from 1-7-88 be paid to those workmen who are required to work on 2nd or 3rd shift.

Demand No. VI:- Leave Travel Allowance:

It is demanded that each workman be paid Leave Travel Allowance of Rs. 1000/- once in two years.

Demand No. VII:- Bonus and Ex-gratia

It is demanded that each workman be paid an Ex-gratia amount and Bonus at the rate of 20% of the wages earned in each year.

Demand No. VIII:- Canteen

It is demanded that wholesome food be supplied through the canteen and canteen facility be extended to the workmen at Carambolim and Old Goa.

Demand No. IX:- Drivers and Cleaners:

Drivers and Cleaners be supplied with Terricotton Uniforms; and be paid overtime after 5.30 p.m. at the rate of double the ordinary wages and the Bhatta be increased by Rs. 12/- per day.

Demand No. X:- Leave Facilities

It is demanded that the leave facilities be as follows:

Privilege leave... 30 days per annum with the facility to accumulate the leave upto 180 days.

Casual leave ... 9 days per annum.

Sick leave ... 12 days per annum.

Holidays... 14 days per annum to be mutually agreed between the management and the workmen.

Demand No. XI:- Fans

It is demanded that fans, two giant fans be set up in the bottling plant for the loaders and unloaders.

Demand No. XII:- Rest Room Facilities

It is demanded that the number/strength of the security personnel be increased and they be provided with furnished quarters.

Demand No. XIV:- Shoes and Umbrellas

It is demanded that each workman be given an umbrella at least once in two years; and the workmen in the category of shippers, welders security and those in the machine shop be given shoes. This issue required discussions.

Demand No. XV:- Thrift Funds

This issue requires discussions

Demand No. XVI:- Medical Benefits

Those workmen who have crossed the ESI limit ought to be paid an amount of at least Rs. 1000/- per year as medical benefit.

Demand No. XVII:- Promotion Policy

A promotion policy should be mutually worked out between the management and workmen in respect of the workers in the Garage/Fabrication/Workshop.

Demand No. XVIII:- Lockers

It is demanded that all the workmen be issued with lockers.

Demand No. XIX:- Production Section

It is demanded that the manpower in the production Section may be increased.

Demand No. XX:- The demands shall be brought into force retrospective effect from 1-7-1988.

2. On receipt of the reference, a case was registered under No. IT/6/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (For short, 'Union') filed Statement of Claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (For short 'Employer') is a partnership concern having Head Office at Campal, Panaji Goa. That the employer is engaged in the business of distributing soft drinks and employers more than 100 workers. That the Union submitted a Charter of Demands but the employer refused to negotiate and thereafter, the dispute on the charter of demands was referred to this Tribunal for adjudication. The Union stated that the demands raised by them are just and legal.

3. The employer filed written statement at Exb. 4. The employer denied that they employs more than 100 workers in their employment. The employer stated that the Union, namely, the Gomantak Mazdoor Sangh does not represent majority of the workmen or that the employer refused to negotiate on the charter of demands. The employer denied that the demands raised by the Union are legal and justified. The employer stated that the workmen are not entitled to any reliefs. The Union thereafter filed Rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and subsequently, the case was fixed for recording the evidence of the Union. However, before the evidence could be recorded, the parties submitted that the dispute between them is being amicably settled and prayed for time to file terms of settlement. Accordingly, the parties appeared on 20-11-98 and filed terms of settlement dated 20-11-98 at Exb. 16. The parties also filed an application dated 20-11-98 praying that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement which are duly signed by the General Secretary of the Union and the employer. I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the following consent Award in terms of the settlement dated 20-11-98 Exb. 16.

ORDER

1. The Union hereby agrees not to press for reliefs in Ref. No. IT/6/92 pending in the Hon'ble Industrial Tribunal, Government of Goa and hereby withdrawn the demands made on the Employer in view of cessation of work at the Employer's establishment.
2. The parties hereby agree that in view of these terms of settlement, the dispute between the workmen and the Employer M/s. Agencia E. Sequeira in Ref. No. IT/6/92 is conclusively settled and the workmen/Union shall have no claim/demand of whatsoever nature against the Employer in relation to their employment or any other matter.
3. The parties agree to file this settlement in the Hon'ble Industrial Tribunal, Government of Goa in Ref. No. IT/6/92 with a request to pass an Award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/240

The following Awards dated 28-12-1998 in Reference No. IT/1/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/1/92

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Ground Floor,
Khadapaband, Ponda-Goa. ... Workmen/Party I

V/s

M/s. Agencia E. Sequeira
Campal,
Panaji-Goa. ... Employer/Party II

Workmen/Party I represented by Adv. Shri P. B. Devari
Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated: 28-12-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-12-91 bearing No. 28/45/91-LAB referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of M/s. Agencia E. Sequeira, Borim, in laying off the following 25 workmen from their factory at Borim, Ponda Goa is legal and justified.

1. Shri Ramdas Naik, Asst. Auto Electrician
2. Shri Constancio Jose Pereira, Asst. Mechanic
3. Shri Pedro Santan Dias, Helper
4. Shri Vincent Caetano Dias, Asst. Welder
5. Shri Shanu Vassu Naik, Helper

6. Shri Bicu Waman Gauncar, Helper
7. Shri Anand Morto Naik, Helper
8. Shri Francis Manuel Fernandes, Helper
9. Shri Pandurang Minguel Bomcar, Helper
10. Shri Minguel Antonio D'Souza, Painter
11. Shri Gurudas Narayan Moli, Painter
12. Shri Ganesham Govind Surlekar, Welder
13. Shri Mohandas Balkrishana Chari, Sr. Charis
14. Shri Prabhakar Somnath Chari, Sr. Charis
15. Shri Ashok Rayu Chari, Sr. Charis
16. Shri Ramakant G. Naik
17. Shri Martin Agostinho Vaz, Helper
18. Shri Gajanan Vassu Naik, Helper
19. Shri Tukaram Pandurang Kortikar, Helper
20. Shri Janario Sebastiao Cardoz
21. Shri Sakaram Piso Gaudé
22. Shri Gabriel Luis Gomes
23. Shri John Sebastiao Fernandes, Security/Helper
24. Shri Salvador Domingo Vaz, Security/Helper
25. Shri Vijaianand Babaji Naik, Security/Helper.

If not, to what relief the workmen are entitled?

2. On receipt of the reference, a case was registered under No. IT/1/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (For short Union) filed statement of claim which is at Exb. 3. The facts of the case in brief as pleaded by the Union are that, the Union by letter dated 1-7-91 informed the Labour Commissioner about the illegal lay off of 36 workmen of the Party II w.e.f. 1-7-91 and that the lay off was only to victimise them as the workers had changed the Union and joined the present union namely, Gomantak Mazdoor Sangh who filed the claim application under section 33(C) (1) of the I. D. Act, 1947 for the recovery of the money due arising out of non payment of V.D.A. as per the terms of settlement dated 9-12-86. That the conciliation proceeding held by the Labour Commissioner resulted in failure and further the dispute was referred to this Tribunal in respect of illegal lay off of 25 workmen named in reference. The union contended that the lay off was effected without permission from the Government as the provisions of Chapter VB of the Industrial Disputes Act, 1947 are applicable to the employer as more than 100 workers are employed by them. The Union contended that the reasons given by the employer for lay off cannot be the reasons for lay off as paucity of work is artificially created by the employer only to victimise the workers. The Union therefore, contended that the lay off is illegal and unjustified.

3. The employer filed written statement which is at Exb. 4. By way of preliminary objections, the employer stated that the issue of lay off cannot be the subject matter of an industrial dispute and also that since the Union did not raise any demand on the employer, there is no industrial dispute and hence the reference is null and void. The employer stated that they have two industrial establishments, one being trading

establishment known as Borim Unit and the other Borim establishment and Metal Forming Unit situated at Borim, Ponda Goa. The employer stated that the surplusage of work force arising out of paucity of work has been an issue before the management for long period and on account of desire for healthy industrial relations, the employer bowed to the wishes of the workmen and the Union and refrained from reducing the work force. The party II stated that the settlement dated 12-3-83 was signed with the Union as a result of which basic scales were revised and D. A. was introduced for the first time and also the workers were provided other allowances. On expiry of the said settlement, the Union submitted a fresh charter of demands and a new settlement was arrived on 29-6-85. The employer stated that the surplusage of work force arising therefore has placed the management in a predicament and the reduction of the workforce was the need of the hour and the Union was aware of the situation arising as result of the idle workforce, loitering around the factory. The employer stated that the Union/workmen approached the employer and requested not to resort to retrenchment and to make maximum efforts to utilise the surplus workforce for other purpose where ever possible and accordingly, in the terms of settlement dated 9-12-86, on the issue of surplusage it was agreed that in the event of surplus of personnel persisting the employer may during the course of the agreement opt to constitute and industrial security team from amongst the existing workmen and the employees identified by the employer as suitable and available, agree to undergo one month's training and one month's probation, untill all requisite position are filled. It was also agreed that such employees who are confirmed for industrial security duties shall receive one extra increment on confirmation and during the training, probation and confirmed service on the industrial security, employees agree to abide by timings, rules and regulations governing such duty. The employer stated that in order to overcome the surplusage, some employees were trained and were made part of industrial security team. The employer stated that due to surplusage they made efforts to re-deploy the surplus workforce and sought to utilise the surplus workforce in new endeavours either of employer or in other occupations including at other endeavours. The employer stated that they got the services of some of the surplus workforce utilised wherever possible at a new unit which was started by another employer, but despite of re-deployment and utilisation of work force by the new unit, surplusage continued and idle work force on its roll was proving to be tremendous burden on the ex-chequer. The employer stated that the management having borne heavy liability on account of surplusage finally decided that the only option available to them is to retrench the surplus workmen and therefore, after exploring all possibilities of avoiding such drastic action, the employer finally decided to retrench the workmen from service w.e.f. 17-9-91. The employer denied that the lay off is illegal or unjustified or that the

lay off has been effected with permission of the Government. The employer stated that the provisions of the Industrial Disputes Act, 1947 are not applicable as the employer does not employ more than 100 workmen. The employer denied that the paucity of work has been artificially created by the employer with the intention to victimise the workmen as alleged. The employer stated that the lay off is legal proper and in accordance with the law. The employer denied that the workmen are entitled to any reliefs as claimed by the Union. The Union thereafter filed Rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed and subsequently, the evidence of the Union was recorded. When the case was fixed for recording the evidence of the employer, the parties submitted that the dispute between them is being settled and prayed for time for filing the terms of the settlement. Accordingly, on 20-11-98, the parties appeared and submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 20-11-98 at Exb. 16. The parties also filed an application praying that consent award be passed in terms of the settlement dated 20-11-98. I have gone through the terms of the settlement. The same are duly signed by the General Secretary of the Union and by the Employer. I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 20-11-98 Exb. 16.

ORDER

1. The Union hereby agrees not to press for reliefs in Reference No., IT/1/92 pending in the Hon'ble Industrial Tribunal, Government of Goa and hereby withdraws its demands made on the Employer in view of cessation of work at the Employer's establishment.
2. The parties hereby agree that in view of these terms of settlement, the dispute between the workmen and the employer M/s. Agencia E. Sequeira in Reference No. IT/1/92 is conclusively settled and workmen/Union shall have no claim/demand of whatsoever nature against the Employer in relation to their employment or any other matter.
3. The parties agree to file this settlement in the Hon'ble Industrial Tribunal, Government of Goa in Ref. No. IT/1/92 with a request to pass an Award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/242

The following Award dated 11-12-1998 in Reference No. IT/67/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/67/89

Workmen,
Rep. by the Goa Municipal
Workers Union,
Kamgar Karyalaya,
Behind Municipality,
Panaji-Goa. ... Workmen/Party I

V/s

1. The Chief Officer,
Mapusa Municipal Council,
Mapusa, Bardez-Goa. ... Employer/Party II
2. Director of Municipal
Administration,
Panaji-Goa. ... Employer/Party III

Party I - Represented by Adv. Shri C. J. Mane
Party II - Ex-parte
Party III - Ex-parte

Panaji, Dated: 11-12-1998

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act 1947 (Central Act 14 of 1947), the Government of Goa referred the following dispute for adjudication by order dated 15th September, 1989 bearing No. 28/5/98-LAB.

"Whether the following workmen who are daily rated workmen are entitled to be declared as permanent workmen.

1. Shri Manohar Raghunath Mandrekar
2. Shri Babu Siddappa Hosmani

3. Shri Bassappa Faquirappa Harijan
4. Shri Shivanand Harmalkar
5. Smt. Laxmi Narayan Harijan
6. Smt. Ellavva Durgappa Kamble
7. Smt. Saraswati Krishnappa Harijan
8. Smt. Krishnabai B. Harijan
9. Smt. Kripa Hallikar.

If so, from what date ?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/67/89 and registered A/D notice was issued to the Party I (for short, "Union") and the Party II (for short, "Employer"). In pursuance to the said notice the parties put in their appearance. The Union filed its statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the Union are that Shri Manohar Raghunath Mandrekar, Shri Babu Siddappa Hosmani, Shri Basappa Fakirappa Harijan, Shri Shivanand Harmalkar, Smt. Laxmi Narayan Harijan, Smt. Ellavva Durgappa Kamble, Smt. Saraswati Krishnappa Harijan, Smt. Krishnabai B. Harijan, and Smt. Kripa Hallikar, (for short, "Workmen") on daily wages. The Union annexed to the statement of claim Annexure "A" giving the particulars of the workmen as regards their date of employment, designation and daily wage paid to them. The Union also annexed Annexure "A-1" to the statement of claim giving the details as regards the wage paid to a monthly paid employee and the wage paid to a daily rated worker, which showed that a worker on monthly basis is paid Rs. 1110/- per month whereas as a worker on daily rated basis is paid Rs. 27/- per day inclusive of all allowances though there is no difference in work of monthly paid worker and daily rated worker. The Union contended that the daily wage workers are not given weekly off and holidays which are given to the permanent workers, by the employer-Municipality thereby indulging in unfair labour practice. The Union therefore claimed that the workmen are entitled to get their service regularised and declared as permanent workmen with immediate effect with wages, allowances and other benefits as payable to nine permanent workmen in the scales and grade of regularly employed persons.

3. The employer filed the written statement which is at Exb.4. The employer stated that the claim made by the union is bad for non-joinder of Government as a necessary party to the proceedings because the employer is a public body controlled by Director of Municipal Administration and Government approval is required for creation of permanent vacancies and filling of the same. The employer stated that the workmen have been working on daily wages and their services cannot be regularised in the absence of permanent vacancies thereof. The employer stated that the daily wage workers are not entitled to the pay scale of permanent workers unless they are appointed or absorbed accordingly. The employer denied that it indulged in any unfair labour practice. The employer

stated that the creation of the permanent post requires approval from the Directorate of Municipal Administration, Government of Goa, and the employer Municipality has no powers to create such posts. The employer therefore submitted that the claim of the union for regularising the services of the workmen cannot be granted as there are no vacancies to appoint them on regular basis.

4. The union thereafter filed rejoinder which is at Exb.5. The union denied that the reference is bad in law for not joining Government as a party to the proceedings. The union denied that the daily rated wage workers are not entitled to pay scales until they are absorbed in regular jobs. The union stated that the workmen whether they are permanent or temporary who are working continuously for several years are eligible for pay scales and grant of annual increment depending on the scales of pay applicable to them. The union relied upon the decision of the Industrial Tribunal, Ahmednagar dated 8th October, 1987 passed in reference (IT) No. 6 of 1984 published in Maharashtra Government Gazette dated 7th July, 1988 in support of its contention that the workmen are entitled to get their services regularised.

5. On the pleadings of the parties, following issues were framed at Exb. 6.

1. Whether the 9 workmen working on daily wages have put in a service of more than 240 days continuously and as such they acquired the status and privilege as permanent employees ?
2. If so, whether the 9 workmen who are daily rated workmen are entitled to be declared as permanent employees of the Municipal Council ?
3. Whether the Director of Municipal Administration, Government of Goa, is a necessary party to this reference ?
4. Whether the claim of Party II/Municipal Council that they could not fill in the vacancies on permanent basis as there was no sanction from the Directorate of Municipal Administration as contended in para. 3 of the written statement ?
5. Whether the 9 workmen are entitled to the declaration that they are permanent workmen in the given circumstances ?
6. What order ?

6. The parties submitted that since the issue No. 3 pertains to whether the Director of Municipal Administration, Government of Goa, is a necessary party to the reference, the said issue should be decided first before recording the evidence of the parties in the case. Accordingly arguments were heard and by order dated 9-12-1996, this Tribunal held that the Director of Municipal Administration is a necessary party in this

reference and consequently he was added as a party to the reference and thus the issue No. 3 stood disposed of. Thereafter notice was issued to the Director of Municipal Administration and he was duly served with the said notice. In spite of the opportunity given no written statement was filed on behalf of the Director of Municipal Administration. On 15-4-96 since none appeared on behalf of the employer and the Director of Municipal Administration, the case was proceeded ex-parte against them and subsequently ex-parte evidence of the union was recorded. The Union filed Affidavitary evidence in support of its claim which is on record.

7. My findings on the remaining issues are as follows:

Issue No. 1: In the negative

Issue No. 2: Except the workman Smt. Krishnabai Harijan, the remaining 8 workmen are entitled to the declaration.

Issue No. 4: In the affirmative

Issue No. 5: Does not arise

Issue No. 6: As per order below.

REASONS

Issue Nos. 1 and 2:

8. The issue Nos. 1 and 2 are taken up together as they are inter-related. In the present case the Mapusa Municipal Council and the Directorate of Municipal Administration have allowed the case to proceed ex-parte against them. Consequently there is evidence only on behalf of the union. The union has filed affidavitary evidence in this case. The Union has filed the affidavit of the workmen Shri Manohar Mandrekar, Shri Bassappa Harijan, Shri Shivanand Harmalkar, Smt. Laxmi Harijan, Ms. Ellava Kamble, Smt. Saraswati Harijan, Smt. Krupa Hallikar and that of Shri Ramesh Rakwala, the son of the deceased workman Smt. Krishnabai B. Harijan alias Rakwala besides the affidavit of Shri Shivram Ajgaonkar, the President of the Union. The union has also examined the workman Shri Babu Hosmani in this Tribunal. Since the Mapusa Municipal Council and the Directorate of Municipal Administration have not contested the proceedings in spite of the opportunity given and have allowed the proceedings to go ex-parte against them, the evidence of the union has gone unchallenged. The Union had annexed to the statement of claim annexure "A" giving the details pertaining to each workman as regards his designation, his date of appointment and the daily wage paid to him. The union had also annexed to the statement of claim Annexure "A" showing the amount of wages paid to a daily rated worker and to the permanent worker in the category of mason, scavenger and driver. The employer namely the Mapusa Municipal Council has filed the written statement in answer to the statement of claim of the union. In written statement the employer did not dispute or challenge the Annexures annexed to the statement of claim by the

union. Also the workmen in their evidence before this Tribunal have given the details as regards their date of appointment, the amount of wages paid to them as also the category in which they were appointed. Their evidence has gone unchallenged. In fact the employer Mapusa Municipal Council have admitted in their written statement that the workmen have been working continuously for more than 240 days on daily wages. The only contention that was raised by the employer Municipality was that the services of the workmen cannot be regularised because there are no permanent vacancies and that no permanent vacancies can be created or filled in without the sanction or the approval of the Directorate of Municipal Administration. Adv. Shri C. J. Mane, the learned Advocate for the union has relied upon the decision of the Supreme Court in the case of Surinder Singh and another V/s The Engineer-in-chief CPWD and others, reported in 1981 I LLJ 403. In this case the petitioners were employed on daily wages for a number of years. They had claimed that they are entitled for the being employed on regular and permanent basis. They had also claimed equal pay for equal work. The Supreme Court did not grant the claim of the Petitioner for regularisation their service because there were no regular posts. However, the Supreme Court observed that the Government would take appropriate action to regularise the services of those who have been in continuous employment for more than six months. Adv. Shri Mane has relied upon another decision that is the decision of the Allahabad High Court in the case of Bhullar Nath Yadav & Others V/s Mayo Hall Sports Complex, Allahabad, reported in 1990 II LLN 946. In this case also the issue of regularisation of the services of the daily rated employees was involved. Their services were not regularised because there were no sanctioned posts for lack of funds. The High Court held that those employees who have put in more than 3 years service on daily wages were entitled to be absorbed and their services are liable to be regularised. The High Court therefore directed the respondents to prepare a scheme for regularisation and absorption on permanent basis of those daily wages who were continuously working for more than three years and as regards those who had not completed three years to initiate regularisation proceedings after they had completed 3 years of service. Similar issue was involved before the Bombay High Court in the case of ANZ Grindlays Bank Ltd. V/s Grindlays Bank Employees Union and another reported in 1998 II CLR 194. The Tribunal had held that the demand of the Union for regularisation of the services of the 29 workmen was legal and justified and directed the Bank to regularise their services within six months. The High Court Confirmed the decision of the Industrial Tribunal holding that the Industrial Tribunal on considering the entire material on record had come to the conclusion that there were permanent posts which were vacant. The Supreme Court in the case of catering cleaners of Southern Railways V/s Chief Commercial Supt. Southern Railway, reported in 1990 LIC 1936 has held that the question of making an employee permanent would arise only after permanent

post has become vacant. All the above decisions therefore lay down the law that in order that the services of a daily wage or temporary workman can be regularised and made permanent, there should be a permanent post and the same post should be vacant. Therefore merely because the workmen put in more than 240 days continuous service it does not mean that they acquired the status and privilege as permanent employees. They are entitled to the status and privileges of permanent employees only if there are permanent posts and they are vacant. I, therefore answer the issue No. 1 in the negative.

9. In the present case the contention of the union is that the nine workmen had completed 240 days of service since the date of their employment and therefore their services are liable to be regularised and made permanent. The employer municipality had taken the defence in the written statement that there were no permanent vacant posts so that the said 9 workmen could be absorbed and their services regularised. The employer municipality had also contended that for creation of the permanent vacancies approval of the Director of Municipal Administration and of the Government is required it being a public body. The union did not bring on record any material to show that there were permanent posts of scavenger, mason, sweeper and driver and that the said posts were vacant. The union has however filed the affidavitory evidence of the workmen, and produced the orders dated 24-2-93 and 2-4-93. The order dated 2-4-93 pertains to the workman Shri Manohar Mandrekar and the orders dated 24-2-93 pertain to the other workmen. The said orders have been produced at Exb. W-2 colly. The workmen in their affidavitory statement have stated that by the said orders they have been appointed on temporary basis under basic pay. Workman Babu Hosmani has stated that he has been appointed on basic pay of Rs. 750-12-870-EB-14-940; workman Manohar Mandrekar has stated that he has been appointed on basic pay of Rs. 750-12-870-EB-14-940; workman Manohar Mandrekar has stated that he has been appointed on basic pay of Rs. 950-20-970-EB-25-1200; workman Bassappa Harijan has stated that he has been appointed on basic pay of Rs. 750-12-870-EB-14-940; Workman Shivanand Harmalkar has stated that he has been appointed on basic pay of Rs. 950-20-1150-EB-25-1175; Workman Laxmi Harijan has stated that she has been appointed on basic pay of Rs. 750-12-870-EB-14-940; Workman Ellava Kamble has stated that she has been appointed on basic pay of Rs. 750-12-870-EB-14-940; Workman Saraswati Harijan has stated that she has been appointed on basic pay of Rs. 750-12-870-EB-14-940; Workman Krupa Hallikar has stated that she has been appointed on basic pay of Rs. 750-12-870-EB-14-940 and Shri Ramesh Rakwala, the legal representative has stated that his deceased mother Krishnabai Rakwala was appointed on basic pay of Rs. 750-12-870-EB-14-940. The above statements are supported by the orders Exb. W-2 colly issued to each workman. The said orders dated 24-2-93 show that the permanent posts to which the workmen were

respectively appointed were created with the sanction of the Director of Municipal Administration dated 28-10-92 as per the Government's notification dated 2-9-91 and the order dated 2-4-93 shows that the permanent post to which the workman Shri Manohar Mandrekar was appointed was created with the sanction of the Director of Municipal Administration dated 26-2-93 as per the Government's notification dated 2-9-91. The said orders also show that the said posts were vacant when the appointment orders were issued, and that the appointment was with immediate effect. As per the said orders dated 24-2-1993, the workmen have been appointed on probation for a period of two years in the existing vacant posts. Therefore they could be made permanent/confirmed only on the expiry of the probation period of two years. The employer Municipality or the Director of Municipal Administration have not produced anything on record to show that the probation period of the workmen was not satisfactory. I therefore hold that the workmen Shri Babu Hosmani, Shri Bassappa Harijan, Shri Shivanand Harmalkar, Smt. Laxmi Harijan, Smt. Ellava Kamble, Smt. Saraswati Harijan and Smt. Krupa Hallikar are entitled to be declared as permanent/confirmed workmen from 24-2-1995 that is from the date of expiry of the probation period of two years and the workman Shri Manohar Mandrekar is entitled to be declared as permanent/confirmed workman from 2-4-95 that is from the date of the expiry of his probation period. The question of the remaining workman Smt. Krishnabai Harijan being declared as permanent workman does not arise because as per the affidavit filed by her son Shri Ramesh Rakwala, the legal representative, and as per the death certificate produced, she had already expired on 16-1-95 that is prior to the completion of the probation period. The workmen as well as Shri Ramesh Rakwala, the legal representative of the deceased workman Smt. Krishnabai Harijan, have stated in their evidence that the workmen were enjoying all the facilities and privileges of a permanent employee from the date of the order issued to them. In the circumstances, except the workman Smt. Krishnabai Harijan, all the remaining 8 workmen are entitled to be declared as permanent workmen and I answer this issue accordingly.

10. Issue No. 4: Though no evidence has been led by the employer on this issue, from the orders dated 24-2-93 and 2-4-93 Exb. W-2 colly, produced by the union, it is clear that the employer municipality had no powers to create permanent posts/permanent vacancies without the approval of the Government and of the Director of Municipal Administration. The said orders show that the permanent posts/vacancies were created in pursuance to the approval from the Director of Municipal Administration and in pursuance to the Government circular to that effect. I, therefore answer the issue No. 4 in the affirmative.

11. Issue No. 5: In my view the issue No. 2 covers this issue also. Since I have already given findings while deciding the issue No. 2 that all the workmen except the workman Smt. Krishnabai Harijan are entitled to be

declared as permanent employees, the question of giving findings on this issue again does not arise. I, therefore answer the issue No. 5 accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that the workman Shri Manohar Raghunath Mandrekar is entitled to be declared as permanent workman from 2-4-95 and the workmen Shri Babu Siddappa Hosmani, Shri Bassappa Faquirappa Harijan, Shri Shivanand Harmalkar, smt. Laxmi Narayan Harijan, Smt. Ellava Durgappa Kamble, Smt. Saraswati Krishnappa Harijan and Smt. Kripa Hallikar are entitled to be declared as permanent workmen from 24-2-95. It is hereby further held that the workman Smt. Krishnabai B. Harijan is not entitled to be declared as permanent workman.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/244

The following Awards dated 29-12-98 in Reference No. IT/61/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/61/94

Shri Suresh Chari,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Khadapaband,
Ponda-Goa.

Workman/Party I

V/s

M/s. Agencia E. Sequeira
Campala,
Panaji-Goa.

Employer/Party II

Workman/Party I represented by Adv. Shri P. B. Devari
Employer/Party II represented by Adv. Shri A.V. Nigalye

Dated: 29-12-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28/17/94-LAB dated 2-4-94 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s. Agencia E. Sequeira, Borim, Ponda Goa, in terminating the services of Shri Suresh Chari w.e.f. 27-8-93 is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/61/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (For short 'Union') filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union are that the workman Shri Suresh Chari, (For short 'workman') was employed with the Party II/Employer (For short 'Employer') and was posted in the carpentry section of M/s. Fabril Gasosa. That the employer was not paying the increased V.D.A. to the workmen since 1988 and therefore, the workers had changed the Union and joined the present Union namely, the Gomantak Mazdoor Sangh in the year 1991. That, after the formation of the present Union, the claim application for the recovery of the money due was filed in accordance with the terms of the settlement dated 9-12-1986 and the appropriate Government issued a recovery certificate under the Land Revenue Court. That, in order to take revenge, the employer started various pressure tactics. That, before the termination of the services of the workman, no proper enquiry was conducted and the Inquiry Officer gave perverse findings. The Union contended that the termination of the services of the workman is by way of victimisation as he was an active member of the Union. The Union contended that the termination of service of the workman is illegal and unjustified and he is entitled to be reinstated in service with full back wages and continuity in service. The employer filed written statement at Exb. 5. The employer denied that they started various pressure tactics such as lay-off, retrenchment and thereafter suspension of workers on fabricated charges in order to take revenge as alleged by the Union. The employer denied that the workman was one of the victim of the said alleged pressure tactics. The employer stated that though the workman was working with M/s. Fabril Gasosa, he was required to carry out the duties/work on behalf of his parent firm as and when need arose or when work was available with them and when so instructed by his superiors. The employer stated that on 27-5-92, the workman was instructed by his superiors to rivet a spring leaf of the

vehicle and he refused to carry out the said work and for the above said misconduct, he was chargesheeted on 6-6-92. The employer stated that a fair and proper enquiry was conducted against the workman and he was dismissed from service on payment of all his legal dues. The employer denied that no proper enquiry was conducted against the workman before terminating his services or that the Inquiry Officer had given perverse findings or that the services of the workman were terminated to victimise him. The employer denied that the termination of the services of the workman is illegal and unjustified or that he is entitled to any reliefs as claimed by the Union. The Union thereafter filed Rejoinder at Exb. 6.

3. On the pleadings of the parties issues were framed at Exb. 7. and subsequently, the case was fixed for the evidence of the Union. However, before the evidence could be recorded, the parties submitted that they desire to settle the dispute amicably and accordingly, on 20-11-98, the parties appeared and filed terms of settlement dated 20-11-98 at Exb. 10. The parties also filed an application dated 20-11-98 praying that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement which are duly signed by the General Secretary of the Union, the workman and the employer. I am satisfied that the terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 20-11-98 Exb. 10.

ORDER

1. It is agreed by and between the parties that the workman Shri Suresh Chari shall be paid by the Employer M/s. Agencia E. Sequeira a sum of Rs. 82,088/- (Rupees Eighty Two Thousand and Eighty Eight only) in full and final settlement of all his claims and demands against M/s. Agencia E. Sequeira.
2. It is agreed by and between the parties that an amount equivalent to 10% of the money payable to the workman Shri Suresh Chari as stated here before in clause No. 1 of these terms of settlement shall be deducted from the dues payable to the said workman and the said deducted amount shall be paid to Gomantak Mazdoor Sangh as his contribution to the Union.
3. The balance of the amount after deducting 10% Union contribution as aforesaid shall be paid to the workman within seven days from the date of this settlement.
4. The parties hereby agree that in view of these terms of settlement, the dispute between the workman and the Employer M/s. Agencia E. Sequeira in Ref. No. IT/61/94 and Reference No. IT/39/94 is conclusively settled and the workman/Union shall have no claim/demand of whatsoever

nature against the employer in relation to his employment or any other matter.

5. The parties agree to file this settlement in the Hon'ble Industrial Tribunal, Government of Goa, in Reference No. IT/61/94 and Reference No. IT/39/94 with a request to pass an Award in the terms thereof.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/99/3426

The following Awards dated 4-6-99 in reference No. IT/62/87 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner Ex-Officio Joint Secretary (Labour).

Panaji, 12th July, 1999.

IN THE INDUSTRIAL TRIBUNAL,
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/62/87

Shri Jude Araujo,
Kadamba Transport
Corporation Workers' Union,
Panaji-Goa. — Workmen/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa. — Employer/Party II

Workmen/Party I-Represented by Adv. Shri A. Nigalye
Employer/Party II-Represented by Adv. Shri P. J. Kamat

Panaji, Dated.: 4-6-99

AWARD

In exercise of the powers conferred by clause (d) of sub. section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 16th October, 1987 bearing No. 28/18/87-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Jude Araujo, Asst. Auto Mechanic, with effect from 24-8-1985 is legal and justified.

If not, to what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/62/87 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb.2. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (for short, "Employer") is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Panaji, Goa. That the employer is engaged in the business of passenger transport i.e. transport of passengers through stage carriages for hire, and for this purpose the employer owns a fleet of over 200 buses through which it carries on the business activities. That the employer has several establishments and depots which are industrial establishment within the meaning of Sec. 2(ka) of the Industrial Disputes Act, 1947. That the employer has more than 1000 employees in its employment who belong to different categories such as drivers, conductors, mechanics, clerical staff etc., and the workman was one of such employees employed in the establishment of the employer as an Asst. Auto Mechanic. That the workman served the employer faithfully and to the best of his ability during the tenure of his service and his past record is clean and unblemished. That in or around June, 1983 the workers of the employer formed a trade union called "Kadamba Transport Corporation Workers' Union" and the workman was the active member of the said union from the date of its formation but he did not take much interest in the affairs of the said union thereafter. That on or about 4th November 1983, the union served a charter of demands on the employer demanding revision of wages and other demands and since the employer failed to consider the said demands of the union the dispute was raised before the Labour Commissioner who initiated conciliation proceedings. That since the employer was interested in delaying the conciliation proceedings, the union was compelled to serve a notice of strike on the employer and the Commissioner, Labour and Employment, on 31st March and 1st April 1984 intimating that the union propose to call on strike on any day after 14th April, 1984. That the workmen did not go on strike either on 15-4-84 or on any date thereafter. That however on or about 25-4-84 the workman received a letter signed by the Depot Manager stating that he had participated in an illegal strike w.e.f. 15th April 1984 and that he indulged in various types of violence and that pending the issuing of charge sheet he was suspended in terms of clause 28(c)(XII) of the Certified Standing Orders of the Corporation. That thereafter the workman received a charge sheet dated 11-6-84 signed by the General Manager, Traffic and Administration, making false and baseless allegations

against him and further stated that the alleged acts amounted to misconduct under clauses (xiv), (xxiii), (xxiv), (xxxiv), (xxxvii) and (Lii) of the Certified Standing Orders of the employer. That it was alleged in the said charge sheet that the workman participated in an illegal strike w.e.f. 15-4-84, incited other workers to join strike, obstructed other workers on 15-4-84 and 17-4-84 and alongwith other workers pulled out two workers from a Private Bus and assaulted them. That an inquiry was held into the charges which enquiry was illegal and was held in violation of the principles of natural justice as also the Inquiry Officer was bias in favour of the employer and against the workman. That in the enquiry proceedings it was at his case that on 15-4-84 he went to Porvorim Depot to join duties but was prevented from entering the premises by the policemen and hence he went home and was at his residence when alleged incident took place on 15-4-84, and his further case was that he did not participate in the alleged incidents dated 17-4-84. That the Certified Standing Orders of the employer based on which the charge sheet was issued to the workman were not in force on the dates of the alleged incidents and the said Certified Standing Orders had come into force after 10-4-1984. That therefore no misconduct could be imputed against the workman in terms of the said Standing Orders and the charge sheet based on the inoperative standing orders is a nullity. That the Inquiry Officer submitted his findings on 24-7-1985 holding the workman guilty of the charges Nos. xiv, xxiii, xxiv, xxxiv and xxxvii. That the workman received a show cause notice dated 6-8-1985 signed by the General Manager, Traffic & Admn., stating that the employer had come to a conclusion that the workman should be dismissed from service forthwith and the workman was asked to show cause why the punishment of dismissal should not be imposed on him. That the workman replied to the show cause notice by letter dated 12-8-85 but the General Manager passed the order dated 24-8-85 dismissing the workman from service forthwith. That the workman preferred an appeal against the said dismissal order before the Managing Director but the said appeal was dismissed. That thereafter the workman raised an industrial dispute demanding reinstatement in service and the conciliation proceedings held by the Asst. Labour Commissioner, ended in failure and the failure report was submitted to the Government dated 4-5-1987 and thereafter the Government referred the present dispute to this Tribunal for adjudication. The workman contended that the action of the employer in dismissing him from service is illegal and unjustified as the action of the employer is based on an invalid charge sheet, illegal enquiry and for no misconduct committed by him. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb.3. The employer admitted that the employees of the employer had organised themselves into an union called

"Kadamba Transport Corporation Workers' Union" and that the said union by letter dated 4-11-83 raised charter of demands against the employer on behalf of the employees. The employer stated that it participated in the conciliation proceedings and in the said conciliation proceedings the employer settled with the union almost all the demands and the only demands which could not be settled were pertaining to the financial liabilities. The employer stated that it had sought time before the conciliation officer to put up the matter before the Board of Directors and seek their approval before any settlement could be reached and accordingly the proceedings were adjourned to 13th April, 1994. The employer stated that by this time the Government declared the Road Transport Industry in the Territory as Public Utility Service under the provisions of Industrial Disputes Act, 1947 as per the notification dated 30th March, 1984 which was published in the Government Gazette dated 5th April, 1984. The employer stated that while the conciliation proceedings were pending on the charter of demands the union served on the employer the notice of strike dated 31-3-84 and 1-4-84 stating that the workmen would go on strike on 14-4-84 or on any date thereafter and that the said strike was on the issue of the charter of demands which was pending before the conciliation officer. That as per the said notice the workmen went on w.e.f. 14-4-84 which was in breach of the provisions of the Industrial Disputes Act, 1947. The employer stated that besides going on illegal strike the workman indulged in acts of obstructing other workers from reporting to work, obstructing the buses of the employer and many other acts which if proved would amount to acts of misconduct as per the Certified Standing Orders of the employer. The employer stated that the workman was suspended pending enquiry and final decision in the alleged indulgence in acts of misconducts and the said letter of suspension was followed by a charge sheet dated 11-6-1984. The employer stated that after the charge sheet was issued an enquiry was conducted by an independent senior professional person and the workman fully participated in the said enquiry and was defenced by a representative of his choice. The employer stated that the workman withdrew himself from the enquiry after his deposition was recorded making some false allegations and the Inquiry Officer submitted his report holding the workman guilty of 5 acts of misconducts out of the seven acts alleged against him. The employer stated that the workman was given a show cause notice dated 6-8-85 asking him to show cause why he should not be awarded punishment of dismissal and on receipt of the reply from the workman and considering his past record the employer terminated the services of the workman by letter dated 24-8-85. The employer stated that the enquiry conducted against the workman is fair and proper and the acts of misconducts levelled against the workman were proved in the enquiry. The employer stated that its action in terminating the services of the workman is legal and justified and the workman is not entitled to any relief as claimed by him.

4. On the pleadings of the parties, following issues were framed at Exb.4.

1. Whether a fair and proper enquiry was held by the Corporation and that too as per the provisions of the standing orders of the Corporation against the workman by giving him full opportunity as alleged?
- 1A. If so, whether the standing orders were in operation on the day of alleged act of misconduct ?
2. Whether the charges levelled against the workman are duly and properly proved ?
3. If so, whether the order of termination passed against the workman is just and proper in the circumstances of the case ?
4. What reliefs, if any, is the workman entitled to?
5. What order ?

5. The issue Nos. 1 and 1A were treated as preliminary issues and the said issues were disposed of by order dated 2-3-93. As per the said order the enquiry was set aside and both the parties were allowed to lead evidence on the merits of the case. Accordingly, the workman as well as the employer led evidence before this Tribunal.

6. My findings on the remaining issues are as follows:

- Issue No. 2* : Charge of obstructing Bus GDX 126 is proved.
Issue No. 3 : In the negative.
Issue No. 4 : As per para. 20 below.
Issue No. 5 : As per order below.

7. *Issue No. 2*:— This issue in fact pertains to whether the charges of misconduct levelled against the Workman vide charge sheet dated 11-6-1984 are proved. Adv. Shri P. J. Kamat, the learned Advocate for the employer submitted that as per the charge sheet dated 11-6-84 Exb. E-6 the charges that are made against the workman are that (1) he went on illegal strike from the midnight of 14-4-84, (2) he obstructed the Bus GDX 126 on 15-4-84 at 1.00 p.m. which was being driven by Valentino Esteves and which was being taken out of depot for trip to Mangalore (3) he paralyze the work, and (5) on 17-4-84 at about 17 hrs. he pulled out mechanic Dina Parulekar from a Private Bus plying between Panaji and Mapusa and alongwith Balkrishna Gadgil, Joe Quadros and others assaulted him and took him to a remote place under threat, duress. Adv. Shri Kamat in the course of his arguments admitted that the employer has not led any evidence to prove the charges mentioned at serial Nos. 3, 4 and 5. With reference to the charge at Sr. No. 1 he submitted that

the workman in his reply to the charge sheet Exb.E-8 has admitted that there was strike and that he had gone on illegal strike. He submitted that in the reply the workman denied only the acts in furtherance of illegal strike. He submitted that the employer has proved that the strike was illegal through the evidence of Shri S. V. Naik. As regards the charge at Sr. No. 2 that the workman obstructed the Bus GDX 126 which was being driven by Shri Valentino Esteves and which was being taken to Panaji for trip to Mangalore, Adv. Shri Kamat submitted that the workman in his reply to the charge sheet did not deny his presence at the Porvorim depot but he took the plea of alibi in the enquiry and in the proceedings before this Tribunal. He submitted that the workman in his deposition has admitted that on 15-4-84 he had gone to the depot at 8-30 a. m. but his case is that he was not allowed to report and hence he went home. He submitted that however, in his reply Exb. E-8 he did not state that he was not allowed to report or that he was at home at 1 p. m. He submitted that the workman has not proved the defence of alibi. Adv. Shri Kamat further submitted that the standard of proof which is required in an enquiry or in a proceeding before the Tribunal is not the same as is required in a Criminal trial. He submitted that in a proceeding before the Tribunal some evidence to prove the charge is enough. In support of his this contention he relied upon the decision of the Supreme Court in the case of Ratan Singh V/s State of Punjab, reported in AIR 1977 SC 1512. He submitted that the charge against the workman that he obstructed the Bus GDX 126 is supported by all the three witnesses examined by the employer, and more particularly the witness Shri Esteves has stated that the workman was among the other workers who obstructed the Bus.

8. Adv. Shri Nigalye, the learned Advocate for the workman, submitted on the other hand that this Tribunal while deciding the preliminary issues has held that the Certified Standing Orders of the employer were not applicable to the workman when his services were terminated. He submitted that therefore the model standing orders were applicable to the workmen and it is to be seen whether the acts alleged against the workman are misconducts under the model standing orders. As regards the contention of the employer that the workmen had gone on illegal strike, he submitted that there is no allegation in the charge sheet that the workman had gone on illegal strike. He whether the acts alleged against the workman are misconducts under the model standing orders. As regards the contention of the employer that the workmen had gone on illegal strike, he submitted that there is no allegation in the charge sheet that the workman had gone on illegal strike. He submitted that the acts of misconduct alleged against the workman are at para. 2 to 4 of the charge sheet where there is no allegation against the workman that he went on strike which was illegal

and therefore he cannot be held guilty for the said misconduct. As regards the charge that the workman obstructed the Bus GDX 126 which was being taken to Panaji, from the Porvorim depot, Adv. Shri Nigalye submitted that even if it is presumed that the workman was involved in the incident, the said incident had taken place on the public road and not within the depot premises and therefore it would not fall within the clause 14(3)(h) of the Schedule I of the Industrial Employment (Standing Orders) Act and hence would not be a misconduct. In support of his this contention he relied upon the decision of the Supreme Court in the case of M/s. Galxo Laboratories (I) Ltd., V/s Presiding Officer, Labour Court, Meerut and other reported in 1983 LAB IC 1909 and in the case of Thozhilali Union V/s BPL India Ltd., and another reported in 1996 I CLR 368. He submitted that the time of the incident is also not proved because according to the charge sheet the incident took place at 1.00 p. m. whereas Shri Esteves has stated in his deposition that instructions were given to him at 10.00 a. m. to bring the Bus from Porvorim Depot and that he left for the depot soon thereafter which means that he must have reached latest by 11.00 a. m. or immediately thereafter and hence the incident could never have taken place at 1.00 p. m. as alleged. He further submitted that the evidence of Shri Prabhu and Shri S. V. Naik cannot be relied upon because they have stated that they were standing towards rear/backside of the bus which was at a distance of 20 mts. and the workers were at the front of the bus which means that they could not have seen what happened at the front side of the Bus. He submitted that there is no evidence to prove the charge of obstructing the Bus GDX 126 against the workman. He also submitted that as regards the other charges it has been conceded by the employer that there is no evidence to support the said charges.

In reply to the arguments of Adv. Shri Nigalye, Adv. Shri Kamat, the learned Advocate for the workman submitted that clause 14(h) of the model standing orders which relates to act subversive of discipline does not state that the act should be done within the premises. He submitted that the Supreme Court in the case of Munchandani Electrical and Radio Industries Ltd., V/s Workmen reported in 1975 (30) FLR 169 held that though the incident of assault had taken place in a Train it was an act subversive of discipline. Adv. Kamat submitted that this decision is not overruled by the Supreme Court in the case of M/s. Glaxo Laboratories (I) Ltd., (supra). Adv. Shri Kamat also relied upon the decisions of the Bombay High Court in the case of (1) Murlidhar Radhoji Savanti V/s General Manager, Nather & Platt (I) Ltd., and others reported in 1992 (64) FLR 78; (2) Shri Suresh S. Patil V/s Mahindra and Mahindra Ltd. reported in 1993 II CLR 231 and (3) Khandu Krishna Bhogade V/s Kalyani Steel Ltd., & Others reported in 1995 I CLR 58.

9. The first question that arises is whether the certified standing orders of the employer applies to the workman or the model standing orders. This is relevant because accordingly it is to be seen whether the charges of misconduct are proved. This Tribunal had framed preliminary issues as regards the fairness of the domestic enquiry held against the workman, and whether the standing orders were applicable and in force at the time of the alleged incident. This Tribunal by findings dated 2-3-1993 disposed of the said preliminary issues. It was held by this Tribunal that the certified standing orders of the employer were not applicable to the workman at the time when the alleged incidents took place. On this ground alone the enquiry was set aside and the parties were asked to lead evidence on merits which the parties did. Therefore Adv. Shri Nigalye, the learned Advocate for the workman is right in submitting that what is to be seen is whether the acts alleged against the workman are the misconducts under the model standing orders.

10. The employer has contended that as per the charge sheet dated 11-6-84 five charges are levelled against the workman namely that (1) he went on illegal strike from the midnight of 14-4-84, (2) he obstructed the bus GDX 126 on 15-4-84 at 1.00 p. m. when it was being taken out of depot by Shri Valentino Esteves, (3) he alongwith some other workers assembled at Porvorim depot and obstructed and threatened the other workers who wanted to report for work on 15-4-84, (4) he forced the staff to stop buses at Mandovi bridge and other places on 15-4-84 and forced them to take the said buses to depot to paralyze the work, and (5) on 17-4-84 he pulled out mechanic Dina Parulekar from a private bus plying between Panaji and Mapusa and alongwith some workers assaulted him. As regards the charges at sr. No. 3, 4, and 5 namely that the workman obstructed and threatened other workers who wanted to report for work on 15-4-84 and that he forced the staff to stop buses on Mandovi Bridge and forced them to take the said buses at the depot and assault on Dina Parulekar, Adv. Shri Kamat, the learned Advocate for the employer has fairly conceded that the said charges are not proved. Besides, I have gone through the evidence led by the employer. In support of the charges the employer has examined three witnesses namely Shri Valentino Esteves, Shri Anil Prabhu and Shri S. V. Naik. All these witnesses have deposed on the stop the buses at Mandovi Bridge and at other places and forced them to take the said buses to the depot to paralyse work or that the workman assaulted mechanic Dina Parulekar. Therefore there is no evidence to support the above charges against the workman and Adv. Shri Kamat has rightly conceded this fact. This being the case what remains to be seen is whether the charges at Sr. No. 1 and 2 namely whether the workman went on illegal strike from the midnight of 14-4-84 and whether he obstructed the bus GDX 126 from being

taken out of the Porvorim Depot on 15-4-84 at 1.00 p. m. are proved or not.

11. The charge sheet dated 11-6-84 has been produced at Exb.E-6. It is a settled law that the charges should not be vague but they should be specific. In the present case the charge sheet reads as follows:

"Further to our letter of suspension dated 23-4-84 please note that we have received information that you have indulged in following acts in furtherance to the illegal strike commenced on 14th April, 1984.

That on 15th April, at around 13.00 hrs. you along with other workers obstructed Bus No. GDX 126 driven by Shri Estevas, Assistant Traffic Inspector which was being brought out of the Depot to ply on the Mangalore route, thereby interfered with the work of other employees in presence of Depot Manager, Police officials and also the District Collector.

You along with other workers who used to unauthorisedly assemble near the Traffic Office at Porvorim Depot, obstructed and threatened several workers who wanted to go on duty. You also restrained some of them forcibly and detained them at the place though they were willing to go on duty on 15th and 16th April and thereafter. Similarly you forced even the willing operating staff who did not want to participate in the strike to stop the buses at Mandovi Bridge and also other places on 15th April and forced them under duress and threatened to take the buses to Porvorim Depot instead of proceeding to Panaji Bus Stand where they were supposed to go with the intention of paralysing normal working of the Corporation.

It is also reported that around 17.00 hrs. on the 17th April, 1984 you forcibly pulled out Shri Dina Parulekar, mechanic from a private bus (Shanta durga) which was plying between Panaji and Mapusa, near Gulan and assaulted him along with Balkrishna Gadgil, Joe Quadros and others. You also dragged him from the bus and took him to the remote place under threat and duress.

The above acts on your part if proved will constitute the following acts of misconduct as per the Certified Standing Orders of the Corporation."

From the charge sheet which is reproduced herein above it can be seen that the allegations or the charges are contained at Sr.No. 2, 3 and 4 of the charge sheet, and these allegations do not state that the workman had gone on illegal strike from the midnight of 14-4-84. The charge sheet only states that the workmen had gone on illegal strike from the midnight of 14-4-84. The charge sheet only states that the workmen indulged in the acts mentioned at Sr. Nos. 2,3 and 4 of the charge sheet in furtherance

of the illegal strike which had commenced on 14th April 1984. Though it may be a fact that illegal strike had commenced on 14-4-84 it does not mean that the workman had also gone on illegal strike. Also no where in his reply Exb. E-8, the workman has admitted that he had gone on illegal strike. If the reply is read as a whole, the workman has denied all the charges/allegations made in the charge sheet. In the absence of specific allegations or charge that the workman had gone on illegal strike from 14-4-84, the workman cannot be held guilty of the said charge nor the evidence if there is any in that respect can be looked into or considered to hold the workman guilty of the said charge. This being the case the only charge which remains against the workman is that of obstructing the Bus GDX 126 on 15-4-84 at 1.00 p. m. when it was being taken out of the Porvorim Depot by Mr. Valentino Esteves, and it is to be seen whether this charge is proved and if it is so whether it amounts to misconduct as per the model standing orders.

12. In the present case the employer has examined three witnesses namely Shri Valentino Esteves, Shri Anil Prabhu and Shri Shrikant Naik. The charge against the workman is that on 15-4-84 at about 1 p. m. he alongwith the other workers obstructed the bus GDX 126 driven by Asst. Traffic Inspector Shri Esteves which was being brought out of the Porvorim Depot to ply on the Mangalore route. The employer has examined Shri V. Esteves, Shri Anil Prabhu and Shri S. V. Naik in support of this charge. All these three witnesses have stated that they had gone to the Porvorim depot from Panaji on 15-4-84 in the morning to bring the Bus GDX 126 at Panaji bus stand. In the charge sheet it has been stated that the incident of obstructing the bus took place at 13.00 hrs. at the Porvorim depot. Adv. Shri Nigalye the learned Advocate for the workman has submitted that the incident at 13.00 hrs. is not proved because Shri Esteves has stated in his evidence that he was given instructions to bring the bus at 10.00 a. m. and soon thereafter they left for Porvorim depot. It is true that there are discrepancies in the statements of the witness as far as time of the incident is concerned. However, in my view these discrepancies are minor discrepancies. Merely because there is discrepancy in the time of the incident it cannot be said that the incident had not taken place at all. In the case of Rattan Singh (*supra*) the Supreme Court has held that the standard of proof in a case before the Tribunal is not the same as in Criminal Tribunal. It is also to be remembered that the incident had taken place in the year 1984 and the evidence of the witnesses is recorded between the year 1996-1998, that is nearly 12 years or more after the incident had taken place. Hence, some discrepancies are bound to be there. All the three witnesses of the employer have stated that the Bus GDX 126 was obstructed by the workers at a distance from the Canteen. Shri Esteves has stated that it was obstructed at a distance of 50 mts. from the Canteen whereas Shri S. V. Naik has stated

that it was obstructed at a distance of about 15 to 20 mts. from the Canteen. But the fact remains that all the three witnesses have made a categorical statement that the bus was obstructed by the workers. All the three witnesses have also stated that the workman was among the workers who obstructed the said bus. They have identified the workman among the workers. In the cross examination of the said witnesses, the workman has tried to set up the case of total denial, that is, the incident of obstructing the Bus GDX 126 did not take place at all. Infact contradictory suggestions have been put to the witness Shri Esteves. At one stage it was suggested to him that on 15-4-84 he had not gone to the Porvorim depot and that he did not drive the Bus GDX 126, at other stage, it was suggested to him that the Bus GDX 126 had to be stopped because another bus was approaching and there was no space for the vehicle to pass. These suggestions were denied by the witness. By suggesting to the witness that the bus GDX 126 was not obstructed but it had to be stopped because there was no space for the other coming vehicle to pass, presence of Shri Esteves at the Porvorim depot as well as the fact that he was taking the said Bus out of the depot is admitted by the workman. The workman has examined himself in his defence. In his evidence he has taken a different stand. He has taken the defence that at the time when the incident took place he was not at the place of the incident at all. If according to the workman he was not present at the depot when the alleged incident took place how he could suggest to the witness Shri Esteves that the bus was stopped because another bus was approaching and there was no space for the vehicle to pass. This suggestion itself shows that the workman was present at the time when the alleged incident of obstructing the bus is said to have taken place. The workman in his deposition has taken the stand that on 15-4-84 he reported for work at the Porvorim Depot at 8.30 a. m. and some policemen who were at the gate did not allow him to enter the gate. He has stated that he waited for about 15 minutes and thereafter went home and he was at home on the entire day on 15-4-84. This defence has been raised by the workman for the first time in the course of his evidence. The first opportunity which the workman had to put up his case was when he filed reply to the charge sheet. This reply has been produced at Exb. E-8. In this reply the workman never stated that he was not allowed to enter the gate by the policemen and that therefore he went home. He did not state that he was not at the depot when the alleged incident took place. His case was that he did not commit any misconduct alleged against him. There is also a major contradiction in the deposition of the workman and in the suggestion put to the witness Shri S. V. Naik in his cross examination. The workman in his deposition has stated that on 15-4-84 he reported for work at 8.30 a. m. and some policemen at the gate did not allow him to enter the gate. He has further stated

that he waited for about 15 minutes and thereafter he went to his home at Merces and was at home for the entire day of 15-4-84. However, suggestion was put to the witness Shri S. V. Naik in his cross examination that the workman was not present at the depot on 15-4-84 after 12.00 p. m., which means that statement of the workman in his deposition that he reported for work at 8.30 a. m. and went home after waiting for 15 minutes is false. The workman in his cross examination has admitted that he did not make any complaint as regards not allowing him to report for work. The reason given by him is that he was not allowed to meet the authorities. If this is so, he could have very well made the complaint by post. He has admitted in his cross that he did not make such a complaint. It is therefore difficult to accept the contention of the workman that he was not present at the time of the alleged incident. Besides, since the workman had taken specific defence that he was at home when the alleged took place, he ought to have examined any person from his house the workman did not do so. Therefore there is no evidence from the workman to prove that he was not present at the depot when the alleged incident took place. The witnesses examined by the employer have corroborated each other on the incident of obstructing the Bus GDX 126 by the workers and that the workman was one amongst them. In the facts of the case discussed above, I have no reason to disbelieve the witnesses of the employer. The workman suggested to the witness Shri Esteves in his cross examination that the Bus GDX 126 was stopped because another Bus was approaching and there was no space for the vehicle to pass. Therefore in view of this suggestion the workman admitted that Shri Esteves had come to the Porvorim depot to take the Bus out of the depot and that he was taking the said Bus out of the said depot. Another suggestion which was put to Shri Esteves was that the workers had gathered by the side of the road and that they were demanding that they should be allowed to enter the depot and join their duties. By this suggestion the workman has admitted the presence of the workers at the Porvorim depot.

13. Shri Esteves, the employer's witness in his cross examination has stated that the Porvorim depot is situated at the side of the internal public road, and the said depot is surrounded by a compound wall with a gate for the vehicles to enter the depot. He has further stated that the workers were sitting outside the depot by the side of the public road at a distance of about 50 mts. from the Canteen. He has stated that the workers obstructed the bus on the road by gathering in front of the Bus and prevented it from proceeding further. He has further stated that the Collector proceeded towards Bus which was obstructed by workers and was standing by the side of the road and was surrounded by workers with whom he was discussing. He has also stated that the Collector ordered lathi charge. The witness Shri S. V.

Naik, has also stated in his deposition that when they reached the Porvorim depot they found that a group of workers were standing near the gate of the depot and were obstructing the Bus from being taken out of the depot. He has stated that the General Manager asked Shri Esteves to go inside the depot and bring out the Luxury Bus GDX 126. He has further stated that Shri Esteves went inside the depot and brought the Bus out and when it reached at a distance of about 15 to 20 mts. from the canteen it was stopped by the striking workers and the workman was amongst the workers who obstructed the Bus and did not allow it to move forward. He has also stated that the Collector addressed the striking workers and when they would not listen, ordered lathi charge. The witness Shri Anil Prabhu has also corroborated the statements of the witnesses Shri Esteves and Shri S. V. Naik. In their cross examination the workman has not been able to extract anything which would support his case or which would make their evidence disbelievable. In the light of what is discussed above, I am of the view that the employer has succeeded in proving that the workman along with the other workers obstructed the Bus GDX 126 which was being brought out of the depot, so as to prevent it from being taken to Panaji Bus stand, and the said obstruction was caused outside the depot of the internal public road. I, therefore answer the issue No. 2 accordingly.

14. Now the question is whether this act on the part of the workman amounts to misconduct. Adv. Shri Nigalye, the learned Advocate for the workman has contended that since the incident has taken place outside the depot premises, it would not fall within clause 14 (3) (h) of the Schedule I of the Industrial Employment (Standing Orders) Act, and hence would not be a misconduct. In support of his this contention he has relied upon the decision of the Supreme Court in the case of Glaxo Laboratories (I) Ltd., (supra). Adv. Shri P. J. Kamat, the learned Advocate for the workman has on the other hand contended that clause 14(3)(h) of the Model Standing Orders which relates to act subversive of discipline does not state that the act should be done within the premises. His contention is that it is immaterial where the act is committed. If the act affects the discipline or working of the establishment, it would be a misconduct irrespective of the place where it is committed. In support of his these contentions he has relied upon the decision of the Supreme Court in the case of Muchandani Electrical and Radio Industries Ltd. (supra) and decision of the Bombay High Court in the case of Murlidhar Radhoji Sawant (supra); Suresh Patil (supra); and Khandu Krishna Bhogade (supra).

15. It has been held by me earlier that on the date when the workman was charged sheeted the Model Standing Orders were applicable to him and not the Certified Standing Orders of the employer. Clause 14(3) of the Model Standing orders enumerates various

acts which constitute "misconduct". Clause 14(3)(h) reads as follows:

"Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline."

In my view the above provision consists of two parts. One is that the concerned workman must have committed an act of riotous or disorderly behaviour at the establishment during the working hours and the other is that he must have committed any act which is subversive of discipline. These are the two separate and independent acts. In my view the commission of the act at the establishment relates only to riotous or disorderly behaviour and not to the commission of the act subversive of discipline. It is not necessary that the act subversive of discipline must have been committed within the premises or precincts thereof. However, the act must not affect the discipline or working of the establishment. I have gone through the decision of the Supreme Court in the case of Glaxo Laboratories Ltd. (supra) relied upon by Adv. Shri Nigalye. In my view in fact this decision of the Supreme Court is not applicable to the present case because as per the clause 14(3)(h) of the Model Standing Orders only the riotous or disorderly behaviour during the working hours which is also an act subversive of discipline must have been committed at the establishment and not any other act which is subversive of discipline. In the present case the workman was not charged for riotous or disorderly behaviour during the working hours, but for obstructing the Bus GDX 126 which was being brought out of the depot. In the case of Glaxo Laboratories the interpretation of the clause 14(3)(h) of the Model Standing Orders was not involved but what was involved was the interpretation of certain clauses of the certified standing Orders of the company, and in particular clause 10. The question involved was whether the various acts of misconduct mentioned in the clause 10 of the Standing Orders of the Company such as drunkenness, fighting, indecent behaviour, case of abusive language, wrongfully interfering with the work of other employees or conduct endangering the life or safety of any other person, assault or threat of assault if committed within the premises of the establishment or in the vicinity thereof or irrespective of the time or place are per se acts of misconduct and would be punishable notwithstanding where and when they were committed. The Supreme Court held that if a workman is involved in a riot or statute in the sense that it provided that on proof of misconduct penalty could be imposed and therefore if the expression "committed within the premises of the establishment or in the vicinity thereof" is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture. The

Supreme Court held that the said expression are the words of limitation and they must cut down the operation of the clause. The Supreme Court however held that what constitutes establishment or its vicinity would depend upon the facts and circumstances of each case. In the case of Munchandani Electrical and Radio Industries Ltd. (supra) a worker of the company had threatened other co-worker with an assault and thereafter he assaulted the co-worker while he was travelling in a Train. The question involved was whether this act amounted to misconduct. The Supreme Court while interpreting the expression "commission of any act subversive of discipline and good behaviour within the premises or precincts of the establishment" held that the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequences of such an act manifests itself. The Supreme Court further clarified that an act wherever committed, if it has the affect of subverting discipline or good behaviour within the premises or precincts of the establishment will amount to misconduct. This decision was considered by the Supreme Court in the case of Glaxo Laboratories Ltd. (supra) but it was not over ruled. In this respect, I am supported by the decision of the Bombay High Court in the case of Murlidhar Raghoji Sawant (supra). In this case both the decisions of the Supreme Court, that is, in the case of Munchandani Electrical and Radio Industries Ltd., (supra) and Glaxo Laboratories Ltd. (supra) were considered by the Bombay High Court. His Lordship Justice B. N. Shrikrishna held that both were the Judgements of the Benches of the Supreme Court consisting of three Judges, and there is no evidence in the Glaxo Laboratories case that the law laid down in Munchandani's case was departed from or much less, intended to be over ruled. His Lordship Justice Shrikrishna also agreed with the Judgement of another Single Judge, His Lordship Justice Dhanuka in the case of Bhavani Metal Works V/s Pandurang R. Swami & others reported in 1991 I CLR 147 wherein it is held that the Judgement in Munchandani's case was merely distinguished by the Supreme Court in Glaxo Laboratories case but was not over ruled as both were judgements of co-ordinate Benches of three Judges and there was no intention of any such over ruling and that both the judgements were operative and binding each in its own sphere and the Trial Court had to rely on the facts of each case to decide which judgement was liable to be invoked. The same principles are laid down by the Bombay High Court in the case of Suresh Patil (supra). This is a Division Bench Judgement in appeal against the judgement of the Single Judge. The Hon'ble Division Bench held that the Hon'ble Single Judge was right in applying the ratio of Munchandani's case and not the ratio of Glaxo Laboratories case looking at the language of the Standing Orders which was before him. In the case of Kalyani Steel Ltd. (supra) referring to the

judgements of the Supreme Court in the case of Munchandani (supra) and Glaxo Laboratories (supra) the Bombay High Court held that there is no conflict between the judgements of the Supreme Court. The High Court held that a proper reading of Glaxo Laboratories case would show that the rule in the case of Munchandani's case has been emphatically reiterated, and the law laid down in the case of Munchandani is clear. The High Court held that an act "subversive of discipline within the precincts of the industrial establishment" as long as the act has a rational and reasonable nexus with the industrial employment and has the deterious consequence of subverting the discipline in the establishment, regardless of whether the act takes place within or outside the establishment. The High Court held that the emphasis is on the baleful consequences of the act and not on its situs.

16. From the above Judgements of the Supreme Court and the Bombay High Court it therefore follows that an act would be misconduct even if it is committed outside the establishment if the said act has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment and what constitutes establishment or precinct thereof would depend upon facts and circumstances in each case. The act committed should have rational and reasonable nexus with the industrial employment and the deterious consequences of subverting the discipline in establishment or precinct thereof irrespective of the place where it is committed. In the present case the act of obstructing the Bus GDX 126 was committed by the workman outside the depot premises, that is on the road outside the depot premises. It is an admitted fact that the employer is a public limited company and is engaged in the business of passenger Transport through stage Carriages and for this purpose employs workmen in various categories such as drivers, conductors, clerks, Traffic Inspectors etc. The Bus GDX 126 was being taken out of the Porvorim depot for the purpose of running the business of the employer. The workman was employed with the employer as a Conductor. Therefore, though the act of obstructing the bus and thereby preventing it from being taken to the destination had taken place outside the establishment, it had the direct nexus with the industrial establishment and the deterious consequence of subverting the discipline in the establishment. The said act had the effect of affecting the discipline or the working/business of the establishment. Therefore even if it is presumed for a moment that the clause 14(3)(h) of the Model Standing Orders provides that the act subversive of discipline ought to be committed within the establishment, still the act committed by the workman is an act subversive of discipline in view of what is discussed above and hence is an act of misconduct. I would like to emphasize again that in my view, in terms of the clause 14(3)(h) of the Model Standing Orders, it is not

necessary that the act subversive of discipline ought to be committed at the establishment or precinct thereof but it could be committed at any place even outside the establishment. I, therefore, hold that the employer has succeeded in proving the charge against the workman that on 15-4-94 at about 1 p.m. he alongwith the others obstructed the Bus GDX 126 driven by the Asst. Traffic Inspector Shri Esteves which was being brought out of the Porvorim Depot to ply on the Mangalore route. I, further hold that the above act on the part of the workman is misconduct under clause 14(3)(h) of the Model Standing Orders.

17. Issue No. 3: It is a settled law that under Sec.11 A of the Industrial Disputes Act, 1947 the Tribunal has the powers to interfere with the punishment awarded to a workman and award lesser punishment instead. However, this power is to be exercised judiciously and not arbitrarily. Infact it is the duty of the Tribunal to find out whether the punishment awarded to the workman is disproportionate to the misconduct proved against him. In the present case the workman has alleged that the action of the employer in terminating his service is illegal and unjustified. In the view of the matter it is to be seen whether the workman deserves punishment of dismissal from service or lesser punishment.

18. Adv. Shri Nigalye, the learned Advocate for the workman, has contended that the action of the employer in terminating the services of the workman is discriminatory. His contention is that the other employees who were charge sheeted alongwith the workman in respect of the same incidents and for identical misconducts, were exonerated by the employer and the charge sheets/suspension orders issued against them were withdrawn. The burden was on the workman to prove that there is discrimination. The employer's witnesses have also lend support to this contention of the workman. Shri Esteves in his evidence has stated that among the workers who stopped the Bus he could identify the workman Shri Jude Araujo, Jairam Malwankar, Ramnath Mardolkar, Ramesh Madgaonkar, Suresh Parvatkar, Sultan Khan, Daulatrao Rane and some others. In his cross examination he has stated that in the year 1984 Shri Daulatrao Rane and Sultan Khan were working at Porvorim Depot and that Shri Sultan Khan is presently working at Panaji Depot whereas Shri Daulatrao Rane has left the services. He has further stated that he knows Ramesh Madgaonkar, Mohan Maulingkar, Anand Maulingkar and Vinayak Naik who were working in the year 1984 and that they continue to work till today. The witness Shri Anil Prabhu has stated that among the workers who stopped the Bus he could identify the workman Jude Araujo, Jairam Malwankar, Dina Naik, Suresh parvatkar, Ramesh Madgaonkar, Sultan Khan, Dipu Shet and others. In his cross examination he has stated that Mohan Maulingkar, Anand Maulingkar and Parshuram Karbe were also present in the group

of workers who obstructed the Bus. He has stated that Anant Maulingkar, Mohan Maulingkar, Dipu Shet and Parsharam Karbe are presently working with the employer. He has also admitted that Vinayak Naik, R. D. Gauns and Parshuram Karbe were promoted as Asst. Traffic Controller after April 1984. From the above evidence of the employer itself it is evident that though many workers had obstructed the Bus GDX 126, only few were suspended and charge sheeted and were subsequently punished. The evidence from the employer itself shows that though the workers Daulatrao Rane, Sultan Khan, Ramesh Madgaonkar, Mohan Maulingkar, Anant Maulingkar, Vinayak Naik, Parshuram Karbe had participated in the act of obstructing the Bus GDX 126 and it was alleged that they had participated in the illegal strike, still no action was taken against them and they continued to remain in service. There is no evidence to show that they were suspended and charge sheeted. The employer's evidence discussed above shows that the workers Vinayak Naik, Parshuram Karbe and R. D. Gauns were in fact promoted as Asst. Traffic Controller after April 1984 though they had taken the part in obstructing the bus GDX 126 and it was alleged that they had gone on illegal strike. The said workers, according to the employer, had committed the same kinds of act of misconduct with which the workman was charged. However, the employer applied different sets of rule to the workers. The employer took action and punished some workers including the workman Jude Araujo but did not take any action against the others whose names are mentioned above. On the contrary there is an admission on the part of the employer that some were even promoted. This act on the part of the employer is discriminatory. The employer has not given any explanation to justify this discriminatory act on its part. I, therefore, hold that the workman has succeeded in proving that the action of the employer in dismissing him from service is discriminative.

19. Now it is to be seen whether the action of the employer in terminating the services of the workman is just and proper. Adv. Shri Nigalye, the learned Advocate for the workman has submitted that the punishment of dismissal awarded to the workman is too severe. He submitted that the past record of the workman was good and no contrary evidence has been brought on record by the employer. Adv. Shri Kamat, the learned Advocate for the employer has submitted on the other hand that dismissal of the workman from service is justified because the act which has been committed by the workman is a serious offence and it has the effect of affecting the discipline in the establishment. With the introduction of Sec.11A to the Industrial Disputes Act, 1947, the Tribunals are now clothed with the powers to interfere with the punishment awarded by the employer, and award lesser punishment instead. The Tribunal has to see that the punishment awarded to the workman is not disproportionate to the misconduct proved

against him. The act which has been proved against the workman is a solitary act of misconduct. There is no evidence that the workman was earlier involved in the similar act of misconduct or any other misconduct. In the case of Association of Chemical Works (1993 I CLR 426) The Bombay High Court has held that the act on the part of the company in discharging the employees from service for the solitary act of disobedience was not legal and justified. It is also to be seen the circumstances under which the act of obstructing the Bus was committed by the workman. It is the case of the employer itself that the workers had gone on illegal strike from the midnight of 14-4-84. As mentioned by me earlier, there is no specific charge against the workman that he had also gone on illegal strike alongwith the other workers. It is possible that the workman took part in obstructing the bus on the spur of the moment. In the case of Palghat BPL & PSP Thozilali Union V/s BPL India Ltd., & anr. reported in 1996 I CLR 368, relied upon by Adv. Shri Nigalye, the learned Advocate for the workman, the company dismissed three workers for assaulting the company's officer outside the company's premises but the Labour Court modified the order of punishment and directed reinstatement with 25% of the back wages. The High Court set aside the Award of the Labour Court and restored the order of dismissal. The Supreme Court however set aside the order of the High Court holding that the award of the Labour Court is proper and justified in the facts and circumstances. The Supreme Court held that the three workers alone were not the members of the assembly of the workmen at the BPL Bus Stop where the assault took place and the workman were agitating by their collective bargaining for acceptance of their demands and attacked the officers when they were going to the factory. The Supreme Court held that under the circumstances the Labour Court was justified in taking the lenient view and setting aside the dismissal order. The same principles can be applied to the present case also as the facts are somewhat similar. It is the case of the employer itself that the workers had gone on illegal strike in pursuance to the call given by the Union with reference to the charter of demands served on the employer and in respect of which Conciliation proceedings were pending. The workers were agitating for acceptance of their demands. The workman Shri Jude Araujo was not the only workman who had obstructed the Bus from being taken out of the Porvorim depot. In the circumstances dismissal of the workman will not be justified. Besides, the evidence on record does not show that the past conduct of the workman was not good so as to justify the order of dismissal. In fact the employer has not produced any evidence to show that the past record of the workman was not good. Therefore, considering all the aspects of the case and in the light of what is discussed above, I am of the view that punishment of termination of services awarded to the workman is disproportionate to the

misconduct alleged against him and is too severe. The employer ought to have awarded lesser punishment than termination of service. I do not find any justification for awarding the extreme penalty of terminating the services of the workman. Besides, I have also held that the action of the employer in dismissing the workman from service is discriminatory. I therefore, hold that the action of the employer in terminating the services of the workman is not just and proper in the circumstances of the case. Hence, I answer the issue No. 3 in the negative.

20. Issue No. 7:- This issue pertains to the relief to be granted to the workman. It has been held by me that the order of termination of service of the workman by the employer is not just and proper. In the case of H.M.T. Ltd. V/s Labour Court, Ernakulan & Ors. reported in 1994 II CLR 22, The Tribunal had awarded reinstatement with full back wages to the workman, and this award was upheld by the High Court. The Supreme Court however modified the award and granted 60% of the wages to the workman mainly on the ground that 14 years had passed since the date of termination of service and that it is now accepted that no party should suffer on account of delay in the decision. In another case, that is, in the case of Palghat BPL & PSP Thozilali Union (supra) the three workman who were dismissed from service were found to have committed misconduct for assaulting the company's officer outside the premises. The Labour Court modified the order of dismissal and awarded reinstatement with 25% of the back wages. The Supreme Court held that the Labour Court was justified in taking lenient view and awarding reinstatement with 25% of the back wages because the workmen were agitating by their collective bargaining for acceptance of their demands and they appear to have attacked the officers when they were going to the Factory. The Supreme Court held that the said three workmen alone were not the members of the assembly of the workmen standing at the BPL Bus Stop who pelted stones and attacked officers of the company when they were going to the factory and caused grievous injuries to them. In the present case also the bus was obstructed in support of the agitation resorted to by the workers to support their demands. It is the case of the employer itself that the

workers had gone on illegal strike. The workman Jude Araujo was one among the 300 workers who obstructed the Bus. More than 13 years have passed since the date of termination of the services of the workman as the termination had taken place on 24-8-85. The dispute was referred to this Tribunal in October 1987 and the same is pending for the last about more than 11 years. Considering the misconduct involved in the present case, the circumstances under which it was committed, and also considering all the aspects of the case discussed by me earlier including the past conduct and further applying the principles laid down by the Supreme Court in the above referred cases, I am of the view that it would be just and proper to reinstate the workman in service with 30% of the back wages from the date of termination of his service by way of punishment. I, therefore set aside the order of the employer dismissing the workman from service and hold that the workman is entitled to reinstatement in service with 30% of the back wages from the date of termination of his service till the date of the Award.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji, in terminating the services of the workman Shri Jude Araujo, Asst. Mechanic, with effect from 24-8-1985 is not legal and justified. The workman Shri Jude Araujo, is ordered to be reinstated in service with 30% of the back wages from the date of termination of his service till the date of the Award and he shall be entitled to full wages and other benefits from the date of the Award.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.